



# **PRACTICAL MANUAL ON PUBLIC-PRIVATE PARTNERSHIPS AND CONCESSIONS**

*Developed within the EU financed Twinning Project: “Strengthening Public-Private Partnership Systems in the Republic of Moldova”*





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## Foreword and introduction

In recent years, (PPP) in the Republic of Moldova gains more and more ground as an effective way to engage and attract private capital to projects of public interest. Among the advantages of this tool for attracting investments can be listed the sharing or transfer of risks to the private sector and the access to private investments and know-how technologies, including the management. PPPs serve as support and provide the possibility of involvement, especially of local authorities in solving problems related to the rehabilitation/construction of infrastructure, improvement of services, etc. Enhanced quality of public administration is the major goal of public state authorities which are there in the service of citizens, both at a central and local level. From that perspective, identification and implementation of new methods, techniques and work instruments aiming at removing subjectivity and making efficient use of resources, should be a common approach for public service.

PPP may also help to overcome the situation in the Republic of Moldova of medium or long-term financing sources with a maturity of three years and above are hardly available in the commercial banking system<sup>1</sup>. That situation in combination with the constant lack of public financial sources suggest that also from that perspective the initiation of PPP is an alternative tool to further develop the country's infrastructure. PPPs are expected to provide a higher performance to key projects and can increase the capacity for innovation and competitiveness in sectors with employment/labor growth potential. In the context of economic policies undertaken by the Government

- on the revival and modernization of the national economy,
- stimulating employment,
- more active involvement of the private sector
- in upgrading and efficient management of public assets,
- based on promoting competition between economic operators,
- guaranteeing equal treatment and non-discrimination of all participants in realization of projects,
- ensuring transparency and integrity of procedures for the award of public private partnership contracts,
- and more efficient use of public money

This manual is dedicated to all stakeholders involved in the initiation and the award of public private partnership projects. The manual is based on national legislation on PPP and information concerning the preparation, economic and financial modeling and award of a PPP contract and is recommended to be used by public authorities, with constant reference to the laws.

Chapter 1 contains general information on PPPs in Moldova, such as providing the distinction between PPP and privatization or the relevant players on the PPP arena. Chapter 2 highlights the legal aspects of the key elements of PPP contracts. Moreover, it describes procedures prior to the award of PPP contracts, as well as the contractual forms of project development, with focus on the basic elements and specific conditions of the PPP contract. Chapter 3 presents aspects of financing PPP projects, including ways and sources of financing. Chapter 4 reveals information regarding project structure and management. In this chapter attention is given to prefeasibility and feasibility analysis of the project, project identification and risk assessment. Chapter 5 highlights the awarding process for PPP contracts with an emphasis on different legal procedures

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<sup>1</sup> See World Bank report no. ACS4414, volume 1, on: "Republic of Moldova. Policy Priorities for Private Sector Development", pp. 80, 89, 91, June 2013; also accessible under: <https://openknowledge.worldbank.org/bitstream/handle/10986/16026/ACS44140v10REV0es0for0PSD0June02013.pdf?sequence=1> (shortcut from 12 June 2015).





which may be applicable. Chapter 6 describes the basic steps to be observed in the process of PPP contract negotiation. The chapter also contains guidance information on the conclusion of PPP contracts. Finally, chapter 7 provides details on the monitoring process.

This Manual, besides the relevant national and EU legislation on PPP<sup>2</sup>, is based on official statistics, materials and briefing notes of the Ministry of Economy, Public Property Agency and other official materials, including those developed during the implementation of the Twinning project "Strengthening PPP system in the Republic of Moldova", implemented with the support of representatives of the Federal Ministry for Economic Affairs and Energy of Germany.

## PART I: GENERAL ASPECTS ON PPP PROJECTS

### 1. Definition of a PPP

PPP is a form of cooperation between public authorities and businesses, established to attract private investments for projects of public interest, increase the efficiency and quality of services, public works and other activities of public interest and efficient use of public property and public money according to value for money and affordability and the principles governing PPPs.

As an instrument for realization of infrastructure projects PPP is also a decisive factor and a catalyst in the medium and long-term development of infrastructure and public services, combining the advantages of the private and public sector.

PPPs are becoming more and more popular because they present a number of advantages. First, they enable the transfer of risk from the state to the private sector, which accounts for the active involvement of the private sector in developing national economy. Secondly, some sectors of national interest, such as transport infrastructure, energy, education, culture, social services, state security, where the state does not have sufficient funds or managerial capacity to provide quality services to the population and which cannot be sold to the private sector, can be developed by using the instrument of PPPs.

#### 1.1. Basic Principles

Principle 1: Legislation should be based on a **clear strategy/ policy for Public-Private Cooperation**. Clear government strategy/policy for PPP is important for signaling the commitment of the Government to develop a stable and attractive investment environment and to reflect its efforts in improving the legal environment. Such strategy should generally be developed on the level of a government approved document.

Principle 2: Parliament should adopt a **sound legislative foundation** for PPPs and concessions. Effective participation of the private sector in the development of infrastructure and services rendered and effective functioning of the PPP regime requires an enabling legal framework. An enabling legislative foundation is important for establishing roles and responsibilities of all parties and estimating a so-called country risk for Moldova by potential investors. The Principle 2 calls for

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<sup>2</sup> For details on the relevant legislation please refer to Annex VI.





the importance of a solid PPP legislation, not only for clarity and stability of the investment regime, but also for signaling a political commitment of the state of Moldova.

- Principle 3: Applicable rules should provide **clarity**. The PPP/concession law should clearly define the scope of its application, i.e. the legal relations to which the law extends. Such clarity is essential for the predictability of the PPP/concession regime, for the stability and validity of the PPP/concession agreement, as well as to prevent ungrounded arbitrary actions by the contracting authorities. With this purpose, the PPP/concession legislation should provide an exhaustive definition of PPP/concession, a list of sectors concerned, contracting authorities, and eligible private partners/concessionaires. It is important to identify in the PPP/concession law the competent authorities at various levels of government empowered to act as contracting authorities, as well as sectors in which PPPs/concessions may be awarded. In order to ensure clarity with regard to the object of concession, this Manual appeals to the importance of indicating the exclusivity of the right granted by the PPP/concession contract.
- Principle 4: The general set-up should provide a **stable and predictable PPP/concession legal framework**. As a rule, privately financed projects are long-lasting. However, many different factors influencing projects may change in the course of their implementation, one of them being legislation. The risk of legislation changing may endanger the validity of the PPP project contract and thus, the sustainability of the project itself. In order to ensure the stability of the project agreement and the parties' capacity to carry out their rights and duties the state should avoid frequent changes to PPP/concession-related legislation and the PPP/concession law should encompass a mandatory provision in the agreement, stipulating the surviving applicability of the regime in force at the moment of awarding a contract or other mechanisms to address legal risks. Herewith, this Manual states that the PPP/concession law should require the PPP/concession contract to address the potential legal risk and set forth provisions regarding compensation for the negative consequences of legislative changes, as well as mechanisms for revising the terms of the agreement, following the occurrence of such changes. The PPP/concession legislation is to provide that PPP/Concession contracts also contain a so-called "stability clause" that is meant to protect the private party/concessionaire from possible changes in legislation.
- Principle 5: This principle relates to **fairness, transparency and accessibility** of the rules and procedures governing the selection of private partners/concessionaires, award and further implementation of a PPP contract. Under this principle, the legislature should foresee the procedure which would guarantee a transparent and competitive selection process, equal treatment of potential investors, opportunity to challenge the rules and decisions of contracting authorities and competitive rules for unsolicited proposals. This principle also stresses the importance of having in place the procedures for a review of the regulatory decisions by an independent body.
- Principle 6: The PPP legislation should be **consistent** with the rest of the **country's legislation** so as to avoid unnecessary collisions of laws and inconsistencies in their application. Appropriate amendments should be currently made available to legislative acts to ensure the coherence and consistency of the legislative base.







- Principle 7: Legislation should **allow for negotiability of PPP/concession contracts**. Freedom to negotiate PPP/concession contracts is important because it allows the factoring of a greater variety of circumstances, while allocating risks between the parties and thus, elaborating a more creative and financially efficient approach to risk allocation. Successful implementation of this principle also requires clear identification in the PPP/concession law of the Agency authorized to negotiate the agreement, implement and monitor the performance under the agreement, including the clear division of powers between central and local authorities. In this capacity it is important to identify persons or offices empowered to enter into commitments at different stages of agreement negotiation. It is also important to determine within the PPP/concession law proper allocation of powers between different levels of Government (central and local authorities) during the negotiation and implementation of the project.
- Principle 8: Legislation should provide **enforceable court or arbitral determinations**. According to this principle, the Moldovan PPP/concession legislation should ensure the possibility to protect the rights and interests of both parties under an effective system of dispute resolution (including the possibility for international arbitration and enforcement of arbitral awards). This principle is especially important for creating a more secure, predictable and attractive climate for investors.
- Principle 9: This principle refers to the importance of the PPP/concession legislation containing some provisions that **allow the Government a possibility to support the project financially** or guarantee to the contracting authority proper fulfillment of its obligations. Government support is often essential to increase the level of comfort of potential investors, enhancing the attractiveness of investment, as well as supporting the execution of projects.
- Principle 10: Finally, PPP rules should **accommodate security interests**. As a rule, only approximately 30% of a concession project is financed by the concessionaire itself. The other 70% is usually borrowed from the banks (lenders) under a security arrangement, according to which the private party/concessionaire gives the lenders security over its rights under the PPP/concession contract. However, in order for this security to be effective, the Government should also provide an assurance that in case of the security's enforcement, proper procedures would allow the PPP/concession to be carried out and the lenders to "step-in" to the concession agreement. Thus, this mechanism guarantees the continuation and sustainability of the concession project and effectiveness of the investment.

## 1.2 Difference between privatization and PPPs

The difference between privatization and PPPs consists in undertaking responsibility by the public authority in project development and ensuring social interest during implementation thereof. Thus, if in the case of privatization, the responsibility is permanently transferred to the private sector, together with the operating and control activity, then within a PPP, the public authority is the one defining the share of private sector's participation in the project and taking responsibility before the public to render quality public interest services.







The realization of public interest is also ensured by including in PPP contracts provisions on continuous monitoring of the project. However, if within a PPP contract, no transfer of ownership takes place, then the assets constructed, rehabilitated, operated, etc. by the end of the contract, are transferred back to the public authority. The main distinction between PPP contracts and privatization procedures is that through a PPP the public sector plays a key role as a buyer of services and works. Thus, when dealing with the privatization of public utilities, private operator customers are private users and in cases of building an infrastructure through a PPP, public authorities (central or local) pay for the services provided and have a major benefit in the assessment of results and quality control of services provided by the private partner to the public sector.

The secret of a successful partnership is the ability to balance the strengths of both sectors. The strengths of the private sector: efficient management, new technologies, workplace efficiency, cash flow management, staff training. Public sector strengths: legal authority, protection of award and procurement policies, aims to meet the needs of the population, dedicated, but constrained staff.

### 1.3 Characteristics of PPP contracts

There is a number of key elements that must be addressed at the initiation of a PPP project: stakeholders and objectives pursued; contractual structure of the partnership; implementation mechanisms; potential conflicts; risk sharing, etc.

In the establishment of a PPP, the partners must determine their roles and responsibilities in the project. The selected institutional model may vary, depending on the objectives of parties involved, the extent, timing and complexity of interventions and project initiation mechanism.

Although in its broad sense a PPP can be confused with any contract (partnership) concluded by the public partner with a representative of the private sector and aimed at the realization of works and services, however, under the current legal framework several features can be established, which, applied cumulatively, allow for a more detailed delimitation of PPP contracts from other similar acts.

In particular, a PPP contract is characterized by the following elements:

- The main purpose of a PPP contract is to improve the efficiency of public finance, construction/rehabilitation/renovation/development and effective management of public sector infrastructure and/or to improve the quality of public services by attracting and proper use, where appropriate, of investment, innovation, expertise and management capacities of the private sector.
- PPP contracts are of a mixed nature, governed by rules of both public and private law (civil). Thus, on one hand, the legal status of the contracting authority, the decision making, the award procedures and main clauses (conditions) of the contract are set in accordance with the Law on PPP No. 179 of 10.07.2008 and special legislation in the field of administrative law. In particular, according to the rules of public law and envisaged public interest tasks, the contracting authority acquires certain prerogatives and privileges in relation to the private partner: the possibility to impose certain clauses in the contract, to control the mode of execution of the contract, to decree its unilateral termination.
- The object of a PPP contract may be the construction, development, rehabilitation (repair) and financing of some infrastructure assets of public interest (both existing and future) usually accompanied by the transfer of the right for long-term delivery/management of public services concerned.
- Public partner of the PPP contract is always, a central or local public authority which has the capacity of the contracting authority and is empowered to decide and conclude such contracts. On the other hand, there may be one or more entities, usually legal entities, private sector representatives (with the status of traders and non-traders), as private partners, which have the necessary capabilities and meet the





requirements of law and other regulations. The private partner assumes more important obligations and risks, which require proper organizational, operating and financial skills. Therefore, to avoid failures, it is recommended that complex contracts and PPPs are to be awarded to companies that have the necessary capacities and experience.

- Public financial resources are used (allocated), if applicable, in installments and based on the criteria of efficiency and performance demonstrated by the private partner. In the event that a PPP agreement provides for the allocation of payments by the public partner for works and services rendered by the private partner, then these are to be allocated step-by-step and only after it is demonstrated that the results and performance in terms of quantity and quality, laid down in contract, have been achieved.
  - A PPP contract is usually a medium or long-term contract, up to 50 years. Due to its complexity, multiple objectives and tasks undertaken by the parties, their relations in a PPP contract are long lasting and require phased achievement of specific contractual activities.
  - The price and value of investments (public or private) in a PPP contract usually play an important role, since these contracts are long-term and refer to public infrastructure improvements.
  - A PPP contract, as a rule, provides that the overall responsibility for the delivery of a public service is transferred to a private company, while the public authority retains responsibility for project-related decision making. Where applicable, the contract may provide a different volume of tasks and services transferred to the private sector.
  - A PPP contract is characterized by risk sharing between the public and private sector under the principle of predictability and allocation of certain risks to the party which has the ability to manage them best and thus, minimize the related negative effects and costs. Among the risks to be covered in a PPP contract the following risks need to be taken into account: political, contractual, commercial, economic, foreign, social, construction, force majeure, lack of results and performance, unexpected suspension, amendment of the legal framework, emergence of legal disputes between parties and other stakeholders, unilateral termination of the contract, etc.
  - Transfer of construction, operating and financing risks to the private sector is one of the basic features of a PPP contract, which differentiates it from a traditional public procurement model. Because of the awareness and proper distribution of different categories of risks, a PPP contract is characterized by a high degree of stability of the relationship between partners.
- Therefore, a contract may be considered a PPP, where all elements and features mentioned above are met. Otherwise, it may involve other types of contracts concluded by the public administration in compliance with appropriate legislation.

In the Republic of Moldova, the **Law on Public Private Partnership** (Law No.179 of 10.07.2008) defines a PPP as a long-term contract concluded between the public and the private partner for the activities of public interest, based on capabilities of each partner to share resources, risks and benefits. Similarly, the law establishes the main contractual forms of PPP realization: turnkey contracts/delivery of services, fiduciary management, lease/rent, concession, company or civil society, and other ways that are not explicitly prohibited by law.





## 1.4 Decision-makers

In order to ensure political support for PPP projects at political level, all PPP related major issues in Moldova must obtain direct approval from the Government. The Government approves the list of state public property and the list of national public works and services proposed for PPP and PPP conditions.

PPP key authorities and their respective powers are summarized in the following paragraphs. (*For more information please see Part IV, paragraphs 1 to 3*).

The Government is responsible for approving the project objectives and establishes general requirements for the selection of the private partner, approving regulatory and policy documents in the scope of PPP, including standard documents<sup>3</sup> and procedures that are considered necessary for the preparation and implementation of PPP.

**Ministry of Economy** is responsible for creating policy documents on the development of PPPs in the Republic of Moldova and drafting proposals for amending and supplementing laws and regulations on PPP projects. In 2012, at the proposal of the Ministry of Economy, the Government established the **National Council for PPP** and approved its nominal composition (GD no.245 of 19.04.2012), as well as created the **Inter-ministerial PPP Network** (GD 255 of 11.04.2013). In 2013, the Ministry of Economy approved the Preliminary Risk Allocation Matrix<sup>4</sup>.

**Ministry of Finance** is responsible for examining proposals involving state budget<sup>5</sup> participation in the realization of already approved PPP projects and is involved in monitoring the expenditure of PPP related funds by the public partners from the Republic of Moldova.

**Public Property Agency (PPA)**, which includes the PPP Unit, evidently plays a key role in the implementation of PPP projects in Moldova. As an implementing agency under the Ministry of Economy, PPA is the first contact point for both public and private partners in all PPP aspects and provides a range of advisory assistance to other public administrations<sup>6</sup> involved in assisting public partners in the identification, coordination, implementation and monitoring of PPPs.

Within the Government's remit it falls to nominate the responsible central public authority, which concludes the PPP contract with the private partner and therefore, responsible for the implementation of the project. In practice, in most cases, one of the line ministries is listed as a public partner in a PPP contract. On the local level, the power to nominate the public authority, which will conclude the PPP contract with the private partner is assigned to the representative authorities and the power of signature is attributed to the city mayor or District council chairman.

An important role in this aspect is borne by local public administration (local and district councils, mayors of cities and heads of district councils). In addition to approving the infrastructure and local public services that are proposed for implementation through PPP and the decisive role they play in the private partner selection process, their powers also include the monitoring of local PPP projects.

## 1.5 First steps in the initiation of a PPP project; strategies

### 1.5.1 Strategy and its description

<sup>3</sup> Such as standard forms on call for tender and/or content of advertisement on the competition for the selection of the private partner.

<sup>4</sup> See Part II(1) and Annex I.

<sup>5</sup> State budget is not only involved in projects where payments whether in part or in full are provided directly from the state budget. State budget may be also affected in other ways.

<sup>6</sup> The definition "advisory assistance" refers to the role of PPA (PPP unit), as a center i providing expertise regarding PPP (preparation, bids, etc.) in general, approval of analysis and providing consultancy etc.





**What is a strategy and why does good project selection depend on the strategies adopted? Strategy and project selection is dependent on planning strategies.**

- a. **Strategic planning.** It is a procedure with a final document rendering long-term strategic objectives and goals and it is necessary before designing and proposing potential projects. The approach and procedure used to set out strategic objectives and goals is called strategic planning. The strategy is a document which sets goals which are supposed to be attained over periods in excess of 5 years, usually 10, 15 and 20 years, and which includes projections of development and relevant goals for periods beyond 20 years.
- b. **Strategic goals.** Prior to any drawing-out and proposing of potential PPP projects, it is necessary to set long-term strategic goals which should be materialized through the projects concerned. An important part of any strategy is the setting of measurable goals, a timeframe for their implementation, and an assessment of the funds required.
- c. **Strategic planning document.** It defines relevant goals and objectives which are to be attained exceeding five years and up to thirty year periods and possibly beyond. Specific project proposals must be included in the financial and time frameworks of action plans and implementing plans, while their objectives should contribute to the materialization of fixed strategic goals. The level of contribution of a particular project to the realization of fixed strategic goals is used to determine the priority for its implementation (hereinafter the priority).
- d. **Key objectives and constraints.** The key objectives of each PPP project will be identified during the project definition stage, as a precursor to strategy selection. The objectives generally relate to:
  - scope (i.e. what is to be delivered) together with any required provision for flexibility in this regard
  - cost, including whole-of-life and transaction costs
  - time
  - quality, including fitness for purpose considerations
  - sustainability, including social, economic and environmental aspects
  - innovation, encouraged through the use of performance project documentation, rather than prescriptive project documentation
  - community or/and public partner/stakeholder needs and expectations
  - contribution to the advancement of public priorities
  - outcomes, encouraged through performance incentives of PPP against classical procurement procedures.

Constraints are aspects of the project that limit, restrict or otherwise impact upon the project objectives in some manner. Constraints are typically unique to each PPP project and may include:

- time constraints
- financial (budgetary) constraints
- physical constraints
- availability of resources, including labor resources
- skills, capability and capacity of the PPP project participants to deliver planned project outcomes
- market or industrial conditions
- policy requirements.





- e. **Hierarchy and priorities of strategic goals.** Various strategies also form part of a certain structure of priorities, regardless whether they are interconnected or hierarchically connected. The relationship of one strategy to another is used to determine the priority for the implementation of its goals. Any project which objectives are in line with the goals of a superior-priority strategy also has superior priority in terms of its implementation. Strategies can be territorial, relating to a specific administrative or geographical area (e.g. local communities), and sector-related, relating to a specific field of human activity or relations (e.g. key line ministries).
- f. **Superior-priority projects.** Respect for the implementation of superior-priority projects ensures an optimal investment of time, money, and natural and human resources (hereinafter, the resources). Three elements of any strategy (measurable goals, deadlines for their realization and planned resources) are the basic precondition for an assessment of the sustainability of the goals at the moment of adopting the strategy, developing the corresponding operative and implementation plans, and an objective monitoring of the implementation of the adopted strategies.
- g. **Action plans and implementation plans.** Periods of up to five years are covered by action plans, workflows and the like (hereinafter, action plans) which focus on the implementation of the strategies adopted. Based on the said plans, annual implementation plans (such as business, financial and other plans) are drawn up.
- h. **Specific project proposals.** They must be included in the financial and time frameworks of action plans and implementing plans, while their objectives should contribute to the realization of fixed strategic goals. The level of contribution of a particular project to the realization of fixed strategic goals is used to determine the priority for its implementation (hereinafter, the priority).
- i. **Measurable goals.** An important part of any strategy is setting of measurable goals, a timeframe for their implementation, and an assessment of the funds required (and possibly, of other necessary resources like investment of time, and natural and human resources). If part of the planned funds is insufficient, the strategy may include guidelines on how to ensure sufficient resources. Strategies, along with being a guideline, also provide benchmarks for making an assessment whether the goals are being achieved with the best value for money.

**Therefore, drawing-up, monitoring the implementation and regular assessment of the adopted strategies is the first and vital essential step on the long path towards successful contracting and implementation of any PPP project.**

### **1.5.2 Strategy drawn up and implemented**

The first step in developing a strategy is the selection of strategic goals, determining their mutual priorities and ensuring a wider social agreement concerning the realization of the goals selected. The drawing-up of a strategy is a creative process, which requires great knowledge and involvement of a number of participants: political and state bodies, scientific institutions, and various other stakeholders. Adoption of a strategy is its political confirmation. Thus, through adoption it becomes part of the adopted policy. Long-term and stable political support and wide-ranging support provided by stakeholders are key preconditions for a successful implementation of any strategy. During the implementation of a strategy, the priorities of a particular goal can change as a result of changed circumstances in the implementation of the strategy, so main goals can become







reserve goals, and vice versa, if that should prove justified in view of the circumstances. However, the decision must always be based on the potential impact on the implementation of the strategically determined scenario.

Therefore, the strategy is a document which clearly sets out a group of measurable goals (number of kindergartens, growth of GDP and the like), time limits for implementation, resources planned for implementation and mutual priorities, i.e., which goal has got priority in relation to others in terms of the award of resources needed for its implementation. Based on the strategies adopted, operative plans are drawn up as the main implementing documents. Operative plans include a detailed elaboration of the strategy into steps no longer than 5 years, and preferably no longer than 1 year, which have got a measurable result and resources planned for implementation, thus, enabling gradual implementation of the strategy and ongoing monitoring of the implementation schedule of its goals.

Annual implementation plans are drawn up on the basis of operative plans and include a distribution of resources in line with the goals and time limits included in the operative plans.

The drawing up of strategies and operative plans must precede the procedure of appraisal and selection of PPP projects, which is laid down in the Law on Public Private Partnerships. That is why in the prescribed procedure the alignment of the objectives of a PPP project with the goals included in the respective strategies which must be stated in the project proposal, is an important precondition for the selection of the PPP project. Each and every phase of a PPP project must be part of operative plans and its goals must be aligned with the relevant strategy.

### **1.5.3 Other basic principles on the initiation of PPPs**

Public authorities which decided to implement a project through a PPP methodology must be prepared to invest substantial financial resources in actions viewing the initiation of PPP projects. For projects that require major investment before any serious consideration of the method of implementation (whether the project should become a PPP project or be financed conventionally - through public procurement), the public authority responsible for implementing a PPP project should develop a document (called Feasibility Study), which investigates the basic parameters of the proposed project.

Public authorities which decided to implement a project through a PPP methodology should also be prepared to invest substantial financial resources in project preparation. A business case, which is part of the Feasibility Study must be calculated in great detail and provide a comparison between the project's realization by the public authority through public procurement or a PPP scheme. In this case, the designated public authority must create a public sector comparator (PSC), in terms of economic advantage (or disadvantage) of each option.

Public Sector Comparator (PSC) is the reference value through which the economic advantage (or disadvantage) of each option can be measured. PSC is the upper limit in terms of costs, in accordance with the business case, which cannot exceed best value PPP offer, based on pre-established quality and standards. PSC is not static. In the award of the contract it is considered good practice to adjust costs and revenue components of the PSC. Final comparison between the total cost of the conventional public procurement option and regular revenue of the PPP model as a sum of all payments and cash values, will make potential savings or efficiency visible (if applicable, in general), which in its turn will justify the decision to go for a PPP or not. Using dynamic processes to calculate investment in preparation for PSC allows a fair comparison of different





payment flows. The basis for this is the assessed value of all procurement options' payment flows for the entire life of the project.

The dynamic process most commonly used for this is the net present value (NPV). In this method, payments and/or revenues arising in different time intervals are made comparable by removing the effects of inflation, by discounting at a predefined point in time and using a discount rate that is prescribed most often by ministries of finance. The result is the cash value of the expected payments, expressed in financial terms. Cost-Benefit Analysis (CBA) enables an evaluation of benefits, costs and risks that ordinarily cannot be expressed in monetary value.

Also, in some cases, prior the Feasibility Study, in order to justify the initiation of a PPP project, the competent public authority is entitled to develop a Pre-feasibility study, details of which are given in Chapter IV.

## 1.6 Criteria for a successful project

- Public authority representatives usually provide important political guidance for PPP projects. However, it is important to have a filtering process at the strategic level, so that only projects able to meet the basic criteria are to be considered for implementation.
- To understand the competitive environment for a project, a market research is carried out, in order to understand the interest and capability of the market to provide the necessary goods, services and capital.
- Evaluation of the success of such a project should be relevant to the project objectives, ensuring at all times that the objectives are expressed in terms of results.
- Implementation of any public investment project as a PPP will result in "value for money" rather than in implementation by conventional means. Jointly with other public investment projects, PPP projects should be selected only after the completion of the Cost-Benefit Analysis (CBA), which can demonstrate that the project has a positive net present value (NPV).
- A business case is used as a tool to support decision making. This should help identifying the best economic alternative/option in terms of implementation.

## PART II: PPP RELATED LEGAL FRAMEWORK

### 2. Legal aspects

Moldova has a special law on PPP, namely the Law on Public-Private-Partnership No. 179-XVI of 10 July 2008. In accordance with Article 2, PPPs are "long-term contracts signed by and between the public and the private partner to practice public interest activities, based on the capacities of each partner to distribute resources, risks and benefits".

To qualify as a PPP project, investment projects must meet all four elements:

1. The project must be initiated by a public authority.







2. The project seeks funding from the private sector in order to implement it (either in part or full).
3. The project is not fully funded by the state or local budget or donor funds.
4. The project involves the design, construction (or renovation), financing, operation and maintenance of a physical asset.<sup>7</sup>

There are different forms of PPPs. Although in practice this issue has not raised major questions, particular attention should be paid where a PPP project is realized through a concession contract, because such projects must be in accordance with the Law no.179 of 10.07.2008, which serves as an umbrella law if the Law no. 534 of 13.07.1995 does not contain provisions relating to a particular topic.

## **2.1 Law on PPP and contractual forms of PPP**

The objective of introducing a law for development of PPP in Moldova was materialized through the adoption of the Law on PPP. In order to implement this law there are several related regulations. A list of most relevant documents can be found in Annex 6. As an essential part of the ongoing reform related to the promotion of alternative financing of public services, Law No.179 of 10.07.2008 pursues explicitly the aim of attracting private investment (foreign) to increase the efficiency and quality of public services and infrastructure and generally, make public spending more efficient. The law is based on modern public governance principles such as equality of treatment, impartiality, non-discrimination, transparency and proportionality and sets the obligation to ensure that the rights, duties, risks and benefits arising from the implementation of any PPP are well balanced between the public and private partners and to ensure that the private partner selection and award took place as a result of a fair competition among several bidders.

Article 2 of the Law No. 179 of 10.07.2008 specifies which entities have the right to engage in a PPP project. Since the public partner must be a legal entity under public law from Moldova or be formed by a group of such entities, the private partner may be a legal entity under civil law, an association of such entities or a natural person. To ensure effective implementation and project management, both partners are free and generally well informed to jointly create a genuine legal entity as a limited liability company (LLC) or by shares (JV) or in the form of civil society.

Articles 2 and 19 of Law No. 179 of 10.07.2008 apply to all long-term contracts between public and private partners which aim to jointly implement a PPP project. In this regard, the Law No. 179 of 10.07.2008 makes explicit reference to ways of realization of a PPP contract and at the same time remains open to include other new forms of PPP, provided that they are eligible under the national legislation applicable. Consequently, in accordance with the principle of freedom of contract and the Civil Code of the Republic, a PPP contract can take any form, provided that commercial risks are assigned to the private partner. In particular, a PPP can be implemented through service contracts, management (fiduciary) contracts, lease agreements or concessions.

## **Contractual forms of PPP**

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<sup>7</sup> In some projects certain single elements may not be implicated (e.g. design or operation)





Law No. 179 of 10.07.2008, article 18, paragraph 1 specifies the following contractual forms for PPP realization:

- a) contractor agreement/ delivery of services;
- b) fiduciary/ management agreement;
- c) lease/rent agreement;
- d) concession agreement;
- e) company or civil society contract

The list is not exhaustive, and their description is given in Annex III.

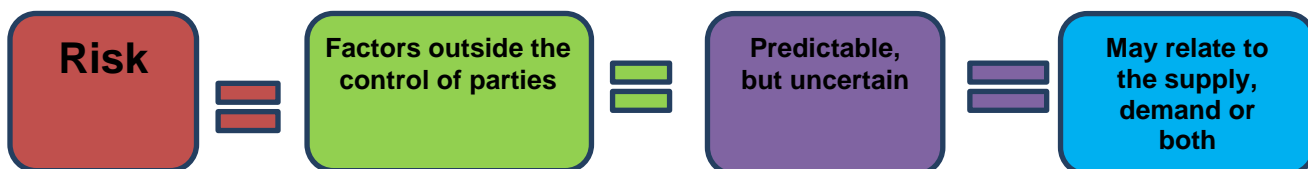
## 2.2 Law on concessions

Law No. 534 of 13.07.1995 on concessions, art. 1, p. 1 defines concession as "a contract by which the State assigns (transmits) an investor (natural or legal person, including foreign one) in return for a royalty, the right to conduct prospecting, exploration, capitalization or restoration of natural resources on the territory of the Republic of Moldova, to provide public services, to exploit state (municipal) property which under the law is fully or partially removed from the civil circuit and the right to conduct certain types of activities, including those which represent the State monopoly, taking over the management of the object of concession, the presumptive risk and financial liability".

As already mentioned above, concessions are a specific type of PPP. The main criterion for this distinction is that the concession obliges to transfer the operating risk to the private partner. If the operating risk<sup>8</sup> remains with the public institution, the contract is not a concession, but a public procurement contract.

- In a public procurement contract, a company is paid a fixed amount to complete the works necessary or to provide a service; e.g. a private company builds and manages a highway for a fixed price.
- In a concession, a company is paid mostly because it is allowed to manage and exploit the work or service and is exposed to a potential loss of its investment (transfer or operating risk); e.g. a private company builds and manages a highway and is remunerated by user fees, assuming the risk that revenues will not cover the investment and other costs incurred.

What are the risks associated with a concession?



<sup>8</sup> Which does not include such events as: mismanagement, contract's termination; force majeure circumstances





EU Directive on award of concession contracts, paragraph 18, states that the main feature of a concession always involves the transfer of an economic operating risk which implies the possibility that the investments and costs incurred in operating the works or services provided under normal operation, may not be returned, even if some of the risk remains with the contracting authority/entity. An operating risk should come from factors that are beyond the control of parties (recital 20). When a risk is eliminated the contract is not within the scope of the Directive on Concession.

The predominant concession contracts are to be found in the areas of telecommunications, electricity, railways, water distribution, natural gas transportation and distribution.

**Pros:** Concessions are an effective way to attract private finance required to fund new construction or rehabilitate existing facilities. A key advantage of the concession contract is that it provides incentives to the operator to achieve improved levels of efficiency and effectiveness, since gains in efficiency translate into increased profits and return to the concessionaire. The transfer of the full package of operating and financing responsibilities enables the concessionaire to prioritize and innovate as it deems most effective.

**Cons:** Key drawbacks include the complexity of the contract required to define the operator's activities. Public partner also needs to upgrade its regulatory capacity in relation to tariffs and performance monitoring. Further, the long term of the contracts (necessary to recover substantial investment costs) complicates the bidding process and contract design, given the difficulty in anticipating events over a 25-year period. This drawback may be countered by allowing a periodic review of certain contract terms in the context of the evolving environment. There is additional risk that the operator will only invest in new assets where it expects payback within the remaining period of the contract, unless provisions for these events are set out in the contract. Because of the long-term, comprehensive nature of the contracts, they can be politically controversial and difficult to organize. It is argued that concessions provide only limited competition given the limited number of qualified operators for a major infrastructure network.

### **2.3 Procedures for the award of PPPs**

Law No.179 of 10.07.2008 (in Chapters IV and VII) contains provisions on the award of PPP contracts. For the specific case of a concession, Law no. 534 of 13.07.1995 does also contain a specific chapter (Chapter II) on the award of contracts.

Chapter IV of the Law No.179 of 10.07.2008 describes the main stages of award procedures. It does not provide the three types of award procedures that exist in Moldova, but taking into account the competitive procedures is considered best to get good results from a call for tenders in accordance with the principles of fair competition, these types of procedures are explained in the Regulation on standard procedures and general requirements for the selection of private partner, approved by GD no. 476. Chapter IV of the Regulation contains provisions for private partner selection competition, which is a „one step” procedure, „when the project is of low complexity and the public partner can establish the legal/technical outline of a project”.

Chapter V and VI of the Regulation establish the rules for the prequalification selection procedure and competitive dialogue, respectively.

The principle of confidentiality – keeping secret the information from project documents that could facilitate one or more participants in the competition to be awarded the contract and subsequently negotiating on it (Chapter I Regulation on standard procedures) - must be complied with throughout the entire procedure.





### **2.3.1 Award of PPP contracts through one-stage competition for selection of the private partner**

Stages for awarding a PPP contract in Moldova by application of the single stage competition on the selection of the private partner are described, as follows:

#### **2.3.1.1 Identification of the object and objectives of the PPP**

It is for the Moldovan government to approve any of these publicly owned assets, works and services that may be the object of a PPP project at national level and which are included in the list of state-owned assets and the list of works and services of national interest proposed for PPP, approved by Government Decision no. 419 of 18 June 2012.

In the case of local PPP projects, this responsibility is assigned to local governments (district councils).

Specialized central public administration authorities prepare proposals of PPPs and submit them for consideration to the Public Property Agency, which subsequently, after generalization, are submitted to the Government for approval. Local government executive authorities draw up proposals of PPPs and submit them for consideration to local public authorities, which, within 20 days from the date of receiving the proposals, make the decision on the pertinence thereof.

#### **2.3.1.2 Feasibility study**

Following the decision whether to initiate a PPP project, is the responsibility of the public partner to develop a feasibility study<sup>9</sup> for the project, which demonstrates the opportunities to initiate the project, its technical and economic justifications, its basic characteristics, technical and economic indicators. The feasibility study, which in practice is developed with the assistance of experts identifies and analyzes political, legislative, financial, economic and environmental risk for the development of the proposed PPP project. In accordance with Article 25 (c) of the Law No. 179 of 10.07.2008 and article 7 3 (b) of Law no. 534 of 13.07.1995, feasibility studies need to be approved by PPA. However, it is very important that the feasibility study identifies the form of realization of a PPP, revealing the criteria for selecting this option.

#### **2.3.1.3 Developing and approving standard documentation**

Based on the feasibility study, the project team nominated by the responsible authority (see Chapter 4, of this manual) develops the documentation that will contain detailed description of the PPP project, conditions for realization of the PPP, a draft framework contract which is to be published as a key element in the award of the contract. At this stage the form of realization of the contract will have already been selected. Subsequently, these documents, prior the publication, need to be approved by the Commission for private partner selection.

#### **2.3.1.4 Commission for the private partner selection**

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<sup>9</sup> See chapter III Section 2 of the GD Nr. 476 of 04.07.2012 on the the approval of the Regulation on standard procedures and general requirements for the selection of the private partner





In order to conduct the procedure for private partner selection, the public partner sets up a Commission for selection of the private partner for each asset proposed as object of PPP. The Commission will be composed of an odd number of members – natural persons, not less than 5, which must include at least one specialist in economics, a specialist in law, a representative of the Public Property Agency and a specialist in whatever field a PPP is being initiated. The Commission is ruled by a chairman appointed by the public partner.

If necessary, in case of specific issues, other experts and specialists may be involved in the work of the Commission. Recruited external experts cannot vote in the Commission, but are required to prepare a special report on the technical, financial or legal aspects, expressing their views therein. The specialty report is part of the PPP file.

For PPP projects initiated at the local level, the decision on establishing the Commission and appointing the chairman shall be adopted, where appropriate, by local councils, district councils or People's Assembly of the Autonomous Territorial Unit of Gagauzia. Where appropriate, the Commission may include representatives of the territorial offices of the State Chancellery, territorial tax inspectorates, territorial cadastral offices and independent experts. Commission members and other specialists recruited are obliged to keep confidential all information and contents of documents provided by the private partner, which under the law represent a trade secret.

The provisions of the Law on Conflict of Interest, no. 16-XVI of 15.02.2008 apply to Commission members. Candidates for the member of the Commission on the private partner selection are required, in accordance with art. 13 of the Law on Conflict of Interest, no. 16/2008, to make a statement on lack of personal interests in the PPP to be realized.

The Commission and other specialists recruited are required to sign, on oath, before taking up specific tasks in the evaluation process, a statement of confidentiality and impartiality and confirming that they are not in a situation involving the existence of a conflict of interest.

Among the most important functions of the Commission the following actions should be underlined:

- defining private partner selection criteria and verification of compliance thereto;
- approval of standard documentation (Specifications), approving prequalification advertisements on the organization of the public private partner selection round and where appropriate, advertisements on their revocation;
- deciding on the date of publication of advertisements at each stage of the bidding round;
- determining the size of the participation fee, bank account (participation guarantee) and the bank warranty (guarantee of execution of the project);
- receiving applications for participation in the bidding;
- providing access to prior examination of the object proposed for PPPs and standard documentation, providing necessary explanations; review of bids and running the bidding;
- appointing winners and written communication to tenderers about the results and other functions and duties.





### 2.3.1.5 Advertisement



The bidding officially begins with the publication of the advertisement in the Official Gazette of the Republic of Moldova, in accordance with Article 26 of the Law No. 179 of 10.07.2008, within a period of 60 days, which includes all relevant information about the destination of the PPP project (public partner's name, description and duration of the project, procedural information, deadlines, requirements, selection criteria, allocation of risks, performance indicators and benchmarks). Along with the advertisement, the public partner provides to the private partner concerned full access to project documentation.

### 2.3.1.6 Submission and Evaluation of Bids

Within strict deadline stipulated in the advertisement, bidders (such as civil law entities, individuals and/or their associations) have the right to submit bids for the project. Bids must be submitted in a sealed envelope and must meet the minimum requirements set out in Article 28 of the Law No. 179 of 10.07.2008.

Upon registration the bids are evaluated by the Commission within 30 days after the date stipulated in the advertisement and based on the criteria included therein. Each member of the Commission is obliged to submit in writing to the chairperson his reasoned opinion on each bid. Within the evaluation, the Commission shall take into account the criteria included in the project documentation such as: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, operating cost effectiveness, after-sales and technical maintenance, delivery date and delivery or performance terms.

Steps on submission of bids, opening of bids, evaluation of bids and appointment of the winning bidder are laid down in Chapter IV, Section 7-10 of GD nr. 476/ 02.07.2012 on the approval of Regulation on standard procedures and general requirements for the private partner selection.

## 2.3.2 Award of PPP contract by multi-stage bidding rounds for the selection of the private partner

### **Pre-qualification procedure within the selection of the private partner**

This procedure is performed in two stages, in the first stage of prequalification, pre-selection of bidders must be made on the basis of qualifications and selection criteria set out in the advertisement. The public partner will choose to use the multi-round bidding process for private partner selection, if the project is complex and public partner wants to establish criteria for pre-qualification and subsequently award the PPP contract.

P. 145 of the Regulation on standard procedures and general requirements for the selection of the private partner stipulates that competitive prequalification procedure is carried out in two stages:

- a) pre-qualification selection stage of bidders, by applying pre-qualification criteria;
- b) evaluation stage of the bids submitted by the participants selected by applying the award criteria.

Prequalification bidding is initiated by publishing the advertisement on prequalification, inviting interested economic operators to submit their pre-qualification bids and participate in the bidding process. The advertisement is valid 60 days after its publication in the Official Gazette of the Republic of Moldova. The public partner is required to ensure the publication of the advertisement in the Official Gazette of the Republic of Moldova, in accordance with the form and content established in the standard prequalification documentation (p. 148 of the Regulation).

Also, other provisions regarding the pre-qualification bidding process can be found in Annex 3, and in Chapter V of the Regulation.







## **Competitive dialogue**

Competitive dialogue is a procedure for awarding a PPP contract, which applies to particularly complex contracts, which is organized in two distinct phases: first, the prequalification procedure: each economic operator submits a preliminary bid to obtain the invitation to participate in the dialogue with the public partner (p.183 of the Regulation on standard procedures and general requirements for the selection of the private partner). Economic operators bidding will be assigned the bidder qualification within the competitive dialogue procedure. After completion of the pre-qualification stage, the Commission nominates the qualified bidders and invites them to dialogue.

The second stage is the submission and evaluation of final bids in order to award the contract for PPP (p. 184 of the Regulation on standard procedures and general requirements for selecting the private partner).

The public partner is entitled, in order to ensure maximum transparency, to place the advertisement to initiate the procedure for competitive dialogue and other mass media, local, national or international, or Internet, but only after publication of the notice in the Official Gazette of the Republic of Moldova and on the website of the Public Property Agency, with the obligation to fully comply with the published content and form of notice, as set out in the Regulation p. 185. The period between the publication of a notice to open the competitive dialogue procedure in the Official Gazette of the Republic of Moldova and the website of the Public Procurement Agency and the deadline for submission of tenders shall be 60 days.

In the advertisement opening the competitive dialogue, which initiates the competitive dialogue procedure, in addition to the information in paragraph 48 of the Regulation, the criteria for selection of bidders and other information are indicated in the form of a decision of the Commission. Provisions for the competitive dialogue procedure are contained in chapter VI of the Regulation.

## **2.4 Contracting**

In accordance with the principle of freedom of contract, Law No.179 of 10.07.2008 provides that PPP contracts must meet certain minimum requirements, but leave their specific content to be decided jointly by the partners in the project. The list of these requirements mentioned in article 20 of Law No.179 of 10.07.2008 and in article 13 of Law no. 534 of 13.07.1995 are revealed as general requirements for concession contracts. For concession contracts on land and other natural resources, article 13, paragraph 3, of the Law. 534 of 13.07.1995 provides additional requirements for the content of the concession contract. Also, will be taken into account the benefits of the concessionaire provided for in article 15 and 21 of Law no. 534 of 13.07.1995. Rights and obligations of the concessionaire and the contracting authority can be found in article 16 to 18 of Law no. 534 of 13.07.1995. Articles 23-25 of Law no. 534 of 13.07.1995 contain provisions for guarantees and responsibilities of the parties and must be provided in the Contract.

## **2.5 Amendments and termination**

In accordance with Article 33 of the Law No. 179 of 10.07.2008, any subsequent amendment of the contract is admissible in case of legislative changes taking effect, except for the technical regulations and provisions for the protection of subsoil resources, environment and human health, provided that they significantly reduce the position and economic interests of the private partner.

The provisions on termination of a PPP can be found in Article 31 of Law No. 179 of 10.07.2008. In paragraph 1 are mentioned three scenarios for termination:

- a) at the expiry of the contract concluded between the public and the private partner;
- b) under the agreement between the public and the private partner;







c) in other cases provided by law or contract.

Article 23 (2) of the Law No. 179 of 10.07.2008 gives each party the right to request the termination of the contract, where one party does not comply with its obligations with respect a prior notice of at least 3 months.

For an existing contract of concession, Law nr. 534 of 13.07.1995 (article 14 paragraph. 2) states that only a unilateral amendment of the concession contract "is null and void". It does not contain additional provisions. Given the nature of the concession contract is a long-term commitment that brings the need to adopt to changes, article 33 of the Law No.179 of 10.07.2008 may also be applicable.

Based on article 14 (3) of the Law nr. 534 of 13.07.1995, the grantor is entitled to early termination of the concession contract in the case of<sup>10</sup>:

- a) occurrence of events or facts that give the right to terminate the contract;
- b) breach of contract terms by the concessionaire;
- c) liquidation of the concessionaire – legal entity or death of concessionaire – natural person, who has signed the contract;
- d) bankruptcy of the concessional company;
- e) judgment by the competent court on the invalidity of constituent documents of the concessional company.

The procedure of termination must be specified in the contract (see Article 20 (j) and (k) of the Law No. 179 of 10.07.2008 and article 13 (s) and (t) of the Law nr. 534 from 13.07.1995).

In case the public partner wants to issue a new contract, a new procedure for the selection of the private partner is required.

## **2.6 Conditions for extension of the concession contract**

According to article 14, paragraph 1 of Law no. 534 of 13.07.1995, upon the expiry of the concession contract, given the clauses thereof have been complied with, the concessionaire benefits from the preferential right to extend the contract. In case of extension of the concession contract clauses may be amended by consent of the parties.

This is an exception to the general principle according to which, any contract requires a new competitive procedure in order to find the best deal on the market. Therefore, it can only be applied to concession contracts.

## **2.7 Monitoring and audit**

After the signing of the contract strict and effective supervision of the project is required. According to Article 22 (1) of the Law No. 179 of 10.07.2008 the public partner annually checks how the PPP is being realized, if need be through the assistance of an independent auditor.

According to p. 233 of the Regulation on standard procedures and general requirements for the selection of the private partner, monitoring and evaluation of PPPs at the national level is carried out by the Public Property Agency.

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<sup>10</sup> It should be noted that termination may affect the public budget (for example, terms on partial loans, taking over of services by the public authority, when no private partner can be found in exchange).





According to p. 234 of the Regulation on standard procedures and general requirements for the selection of the private partner - PPP projects initiated by local government authorities or public authorities of the autonomous territorial unit with special legal status are monitored by the government authority within the jurisdiction of the local administrative-territorial unit. Ensuring monitoring and control of PPP projects realization is within the direct competence of the mayor or council district chairman of the respective administrative unit.

In a concession, according to article 18 (1) f) of the Law 534 of 13.07.1995 the grantor has the right to audit the financial and economic activity of the concessionaire by engaging an independent audit service.

Based on p. 33 of this Regulation the monitoring and control of the observance of obligations established in the concession contracts is carried out by the Public Property Agency and local public administration authority.

## 2.8 Disputes

Law No. 179 of 10.07.2008 and Law nr. 534 of 13.07.1995 do not provide a specific procedure for the settlement of disputes that arise during implementation of the project. Therefore, in accordance with Article 36 of the Law No. 179 of 10.07.2008, public and private partners are invited firstly to take measures for amicable resolution, being advised to seek conflicts settlement through mediation and arbitration. Due to the lack of specific provisions general rules on legal protection shall apply. This means that in general the Civil Procedure Code shall be applied jointly with the Administrative Procedure Code. Where there are no conflicting provisions, the Administrative Procedure Code shall take precedence, because it is much more specific (*lex specialis*). If unresolved amicably, the case will be heard at a competent court, within which jurisdiction grantor's office is located.

## PART III: FINANCING PPP PROJECTS

### 3.1 Relevant information

Generally, PPP projects involve the substitution or supplementation of public funds needed for realization of a private capital project and have the effect of transforming the needs for capital in a current year into recurrent spending in future years. It is also useful to consider the consequences of decisions made on projects in the context of ownership of assets, funding for investment and risk-sharing. In this context, it is easier to identify the differences between normal service contracts, PPP and privatization.

An investment project qualifies as a PPP project in case it meets the following elements:

1. The project is initiated by a public authority; however, informal proposals by any private subject could be initiated and submitted as well as the unsolicited proposals;
2. The project will be financed partially or entirely by the private sector;
3. The project is not funded entirely by the public sector (state budget/local budget or donor funds);
4. The project involves the design, construction (or renovation), financing, operation and maintenance of a physical asset.<sup>11</sup>

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<sup>11</sup> In some projects single elements might not be involved (e.g. design or operate).





PPP should not be confused with traditional investment activities of the private sector. An investment, where, for example, a private company plans to build a car plant and in return, receives tax incentives from the government, is not considered a PPP, but rather a state aid case. Moreover, the concept of PPP continues to grow, and in the future, it is likely that there will be new forms of partnerships between public authorities and private companies.

### 3.2 Concepts of financing PPP projects

Currently, there are three main concepts and types of PPP projects, which can be differentiated as follows:

- Financially independent projects;
- Partially subsidized projects;
- Fully subsidized projects.

#### 3.2.1 Financially independent projects

Financially independent projects<sup>12</sup> are projects that have sufficient financial strength to bear the full cost of design, construction, maintenance and operation of the asset during the contract period and the financing costs. This means that beneficiaries of the asset will cover all economic costs charged as tax or tariff, and not the public partner. Examples of financially independent projects are bridges and tunnels, some airports and seaports or stadiums. Sometimes, additional support in terms of revenues for the project derives from trade or sponsorship agreements by including other foreign trade revenues. The most important is that there is no need for public capital or recurrent budget support for the project. For this reason, **financially independent projects are usually considered to be the most desired form of PPP.**

The role of public partner in these projects is to:

1. Initiate PPP projects;
2. Regulate project preparation (including compliance with environmental standards and engineering requirements);
3. Manage and regulate the bidding procedure on the selection of the best private companies for the entire project;
4. Regulation of fees (by contract) that can be charged by service providers offered by the project;
5. Performance monitoring of the service and economic development of the project. Concepts and types of selected PPP depend also on the exchange of goods, services, assets and payments chosen among all contracting parties.

#### 3.2.2 Partially subsidized projects

In many cases, full economic costs of establishing and operating infrastructure assets are significantly higher than users' ability to pay in full. Even if the beneficiaries can afford to pay the price, they may not be

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<sup>12</sup> Financially independent projects – projects in which investments are made entirely by the private partner and aimed at obtaining profit in any economic activity (in this case the state acts as an economic operator seeking to return its investment and make a profit from tax collection). However, financial independence may be limited in certain cases, for example when legislation on tax collection is amended.





willing to pay. For example, if it is an expensive toll bridge, drivers may prefer to take a longer route to find a cheaper alternative. Projects of this character usually put a greater emphasis on social rather than purely economic or financial objectives. A good example of this would be an urban tram system, which normally would have the following main objectives: to improve the movement of people from the suburbs to the center and thus improving the availability and mobility of labor to persuade more people not to use their own transport to travel to the center, thus creating environmental benefits and freeing the parking places in the city for a better productive use, seen from an economic standpoint. If total costs for establishing and providing the service were passed on to the users, the tariffs (or travel tickets) would make the service unattractive and (in this example) the number of passengers would not reach an acceptable level for project's aims. People would see the option of driving to the center by own car as a better alternative. In this respect fares must be adjusted artificially to attract a sufficient number of passengers to realize project objectives. More specifically, the ticket price should be affordable and reasonable. A PPP arrangement in these cases implies for the public partner to establish its specific requirements, together with a detailed description of the project's financial regulation. Because for many of these projects social facilities are a priority, charges or fees that may be collected through the project are subject to regulation (limitation). The public partner will then organize a competitive selection procedure, winner of which would be a private entity, which could provide the services at regulated tariffs for the lowest subsidy from the public partner on a set number of years. Private entity would then be responsible for the detailed design, construction of infrastructure and rolling stock supply, providing capital for this purpose and for the operation and maintenance of the tram line, signaling and rolling stock during the contract period.

### 3.2.3 Fully subsidized projects

Fully subsidized projects are usually public service projects and are characterized by the fact that the public partner is the sole payer, even if there are many users and beneficiaries of the services provided through the project. This is also the main difference compared to their financially independent projects and subsidized projects, where there are usually many beneficiaries who pay for services. In many countries, basic public services are provided free of charge at the point of use. Costs for providing these services are paid from the budget - be it state or local budget/ or a special public fund. A good example of this type of project is a project of maintenance and renovation of a school because neither staff nor students actually pay for using this type of infrastructure and, therefore, the public authority is the only administrative authority which bears the costs.

## 3.3 Case studies

Examples of all three types of PPP arrangements described above can be seen in the table below. It is possible that some types of projects can be delivered in different categories, depending on the circumstances of the country and the project per se. Therefore, it is possible that some types of projects may be included in two or even all of the three categories, depending on the individual circumstances of the project.

PPPs	Financially independent projects	Subsidized projects	Fully subsidized projects of public services
Highways	+	+	+
Railroads	+	+	





Power generation and distribution	+	+	
Airports and air traffic control	+	+	
Seaports	+	+	
Toll tunnel or bridge	+		
Car parks	+		
Concessions	+	+	+
Broadband communications	+		
Renovation of old industrial buildings	+	+	
Culture/sports infrastructure	+	+	+
Tram tracks		+	
Social housing		+	+
Management of city wastes and water (including disposal)	+	+	+
Hospitals, schools		+	+
Penitentiaries			+
Buildings and pipelines	+	+	+

Table 1: PPP contract models – sector models

PPP projects are mostly implemented through the following contractual forms:

- a) contractor agreement/contract of services;
- b) fiduciary management contract;
- c) tenancy/lease contract;
- d) concession contract;
- e) company or civil society contract.

### 3.4 Main characteristics of PPPs

Main obligations of the parties in PPP projects:

- **public partner** identifies and defines the project, implements the feasibility study, including the technical design, publishes the advertisement, organizes selection and negotiation procedures prior to the conclusion of the PPP contract, concludes the PPP contract, receives the public asset at the end of the contract;
- **private investor** participates in the bidding procedure organized by the public partner, if selected, concludes the PPP contract resulting from the negotiation procedure, transferring the public asset at the end of the contract.





- Regarding the duration of the pre-contractual preparation public authorities responsible for initiating the implementation of a PPP project should prepare an initial program for the project, given that the implementation of PPP contract will last more than a publicly funded project. This is due to the more intensive training necessary to comply with the requirements of a PPP project, and the extra time to fulfill the requirements for funding, before the contract is signed and any investment starts. Consequently, responsible public authorities should consider the following intervals: From initiation until the start of the selection procedure - at least 12 months;
- From initiation of the award procedure until the receipt of bids- 60 calendar days;
- Upon receipt of final bids until signing the contract - at least 4 months;

Normally, these periods will vary, depending on a number of circumstances, including the complexity of the project, project size and responsiveness of bidders. Occasionally, a call to the advisory support from Public Property Agency will become necessary. The temptation to reduce the time of consultation must be overcome to exclude project's failure.

The duration of the contract, as one of the most frequently asked questions related to the preparation of any PPP projects respecting the various types of a PPP contract will take into account the following aspects:

1. Estimated useful life of an asset before it becomes obsolete or requires major renovation.
2. Estimated time to obtain an acceptable return by the private partner, including the return of investments;
3. Predicted demographic changes, for example in education.
4. The period of granting credits by the creditors (refinancing implies a risk of worse conditions).

All these aspects are interlinked and usually have the following approximate results in most countries:

1. 35 years and more for projects related to heavy infrastructure (e.g. highways),
2. 25 years for projects involving buildings (e.g. schools, hospitals),
3. 10 years or less for projects involving car parks, electronic communications infrastructure etc.

At the end of the contract, most commonly, assets are transferred in the ownership of the relevant public authority, which can initiate a new bidding for the award of a PPP contract in order to find another partner from the private sector or the same partner if it submits a successful bid. Although uncommon, it is also possible that the assets that are part of the project to be transferred in the manner prescribed by law in the ownership of the private partner, if in the opinion of the responsible public authority, they no longer need it due to changes in the way services are provided or their obsolescence, or asset has become too expensive to be maintained by the public partner, after such a long time of usage.

### 3.5 Financing projects

Public funding within the scope of a PPP project is crucial to ensure a sustainable and efficient risk transfer to the private partner. The private partner may be willing to optimize the delivery of services and costs throughout the life cycle of the project, where it is also responsible for financing the project. The involvement of private capital in PPP projects also leads to greater transparency regarding all project risks, which are then managed in a sustainable manner by various risk carriers. This in theory should translate into economic benefits throughout the project life cycle. This will not necessarily happen without significant efforts to fully assess these risks and ensure that they are properly allocated.





### 3.5.1 Financing arrangements

The financing choice has a decisive impact on the possible increase of efficiency. The public partner must compare the cost of borrowed capital in international markets with trade financing costs and assess whether an apparent margin between the two rates can be overcome by the anticipated effectiveness of the PPP process.

In most countries, PPP projects have been implemented through project funding or loan financing. If PPP projects are financed through project finance, it will create a separate project, but is also common for this to occur for the second form of financing, because private companies want to protect their balance sheets and credibility from possible problems that can occur if using only one financing technique.

Thus, for the financing of PPP projects two different financing techniques can be applied, but project finance is most commonly used in Europe because of its intrinsic characteristics, including cash flow forecasting and risk sharing.

#### Project finance

Project finance is one way of financing projects aimed at negotiating the contract and risk in accordance with the interests of the parties involved and choosing the optimal mix of equity and borrowed capital, including mezzanine capital, for a particular project.

Project finance is financing projects by:

(1) economic and independent legal entities (the so-called investment companies or special purpose entities)

(2) entities providing, after the completion<sup>13</sup>, a separate operating cash flow, which then becomes the only source of credit related to cash flow to be paid to suppliers of capital (cash flow related lending).

Project financing company (known as the Special Purpose Vehicle) acts as an independent company in co-relation with capital providers (private partners) as an entity to service the debt (repayment of debts at maturity).

Seen from the perspective of private sector the interest of the project company is limiting their responsibilities, the so-called **non-recourse** or **limited recourse**. The following chart illustrates the central contractual relationships in PPP financing:

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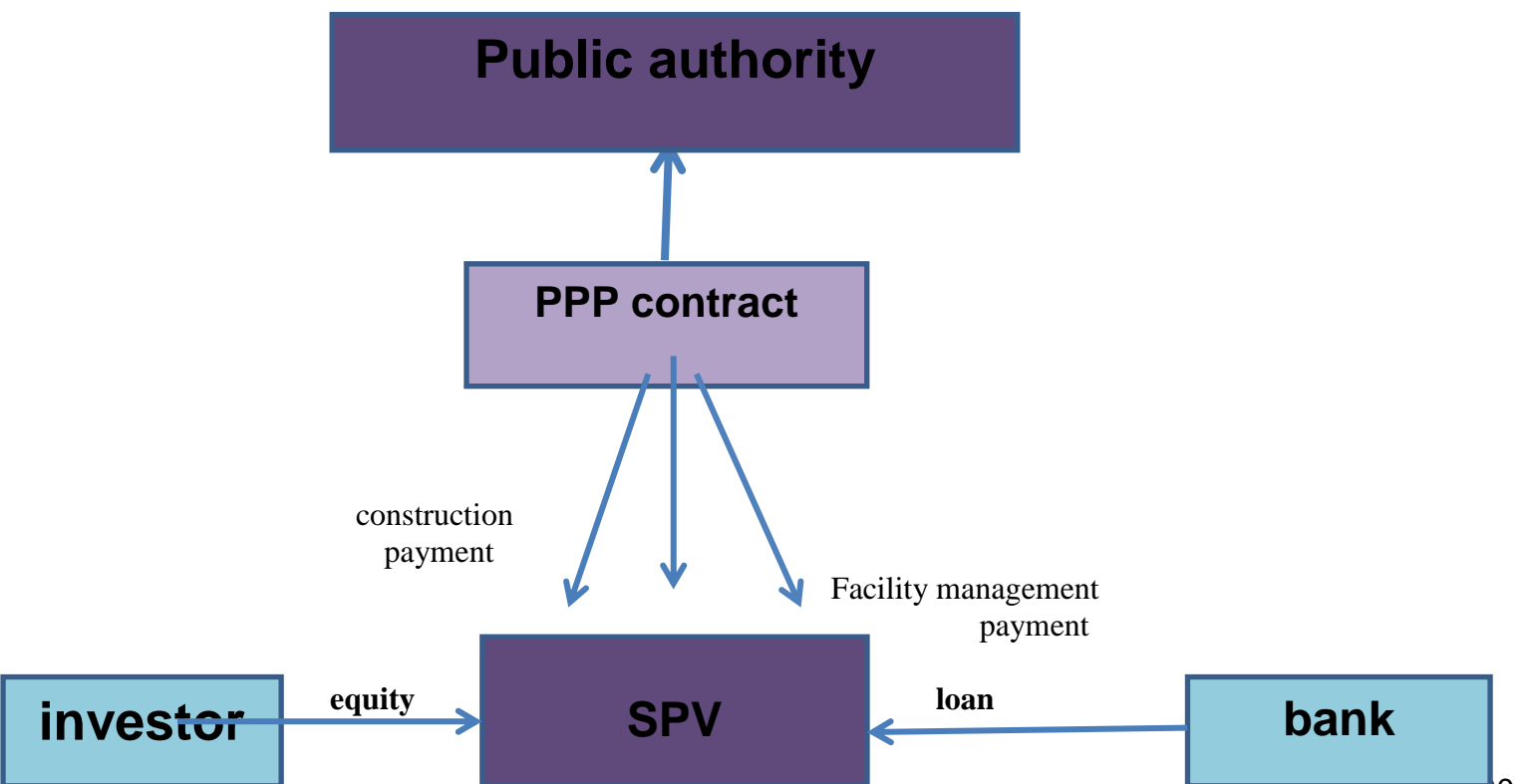
<sup>13</sup> Since the 2008 financial crisis, in many European countries debt financing is no longer considered characteristic for PPP projects. Although the situation may change in the future, this topic is not covered in this manual.



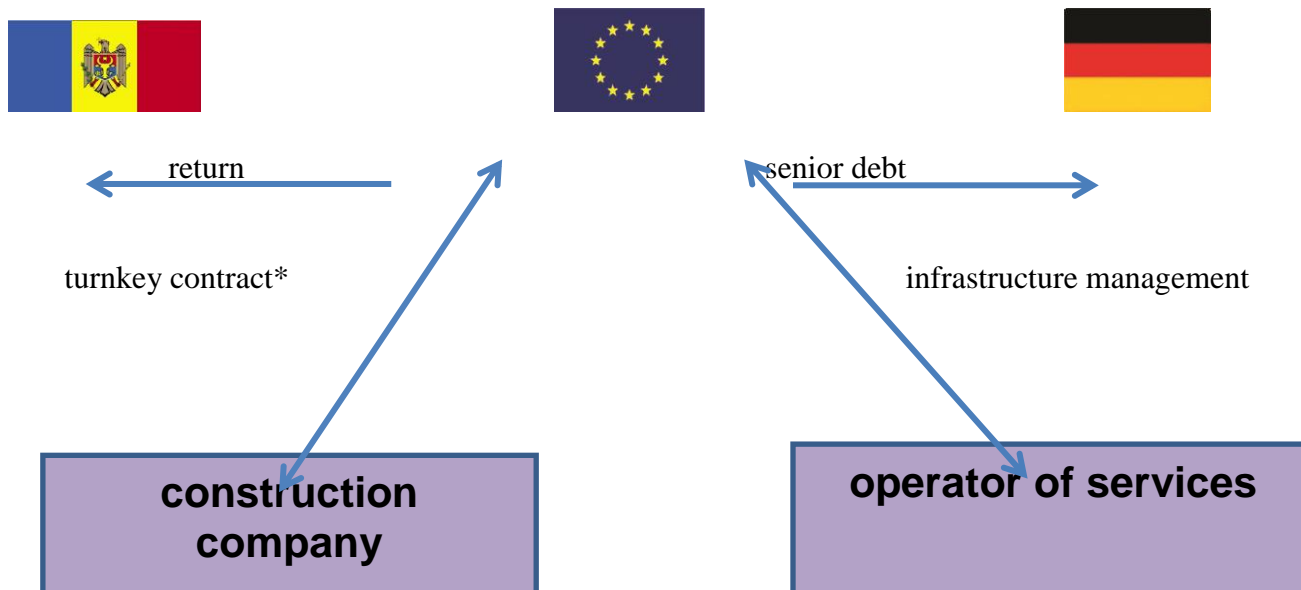




**Fig 2. Main contractual relations in PPP financing**



*This project is financed by the European Union*



\*means engineering, procurement and construction, also known as turnkey contract

### Factoring without recourse

While in many countries, most projects are carried out using project finance, in Germany and France, countries with highly developed large flow of investment and low interest rate on foreign currency loans, especially for small projects (up to 20 million euro), is used the so-called "non-recourse factoring" method (Germany) or "Daily assignment" (France).

The "Factoring without recourse" methodology involves the sale (without recourse) of existing individual or future claims by the private partner whose services are paid at the beginning of the operational phase, at the financing bank. Financing conditions for public partner can only be achieved if the responsible public authority waives, in the benefit of the financing bank, any rights and claims for the payment of compensations deriving from the main contract.

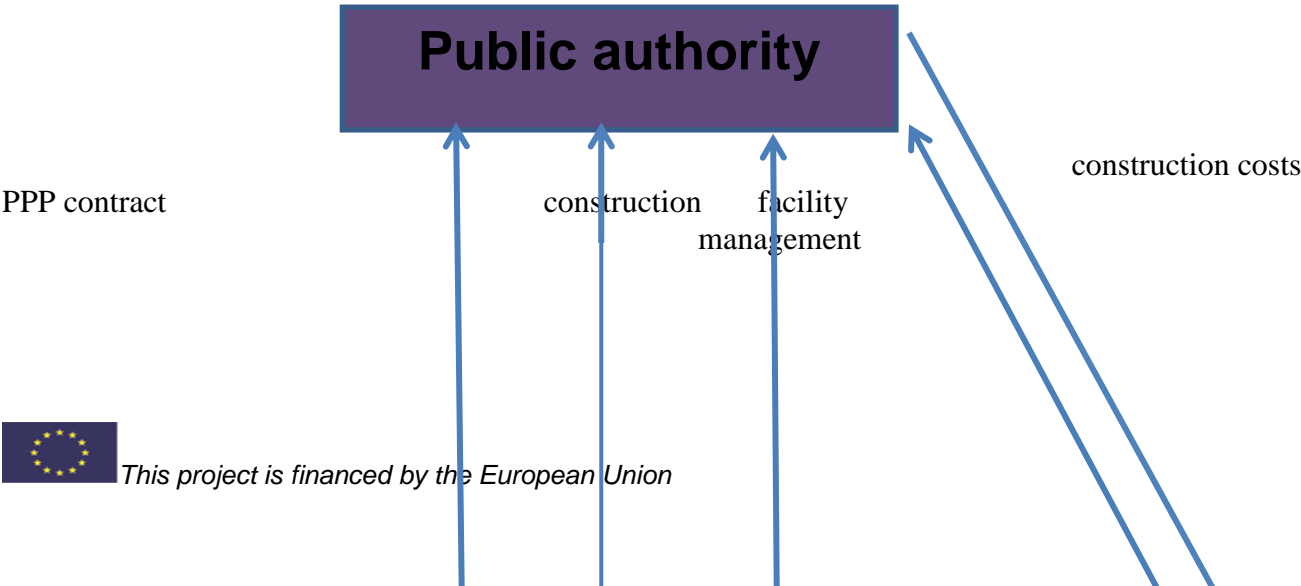
This exemption means that the competent public authority is willing to fulfill its payment obligations to the financing bank, for financing investments in buildings or construction, even if specific events occur, for example, where the provision of services by the private partner is not meeting the contract's provisions and would give public partner the right to reduce the payments. In exceptional cases of early termination of the project, the responsible public authority, after signing a declaration on the grounds of protection may be required, depending on the terms, to pay the full due amount to the financing bank.

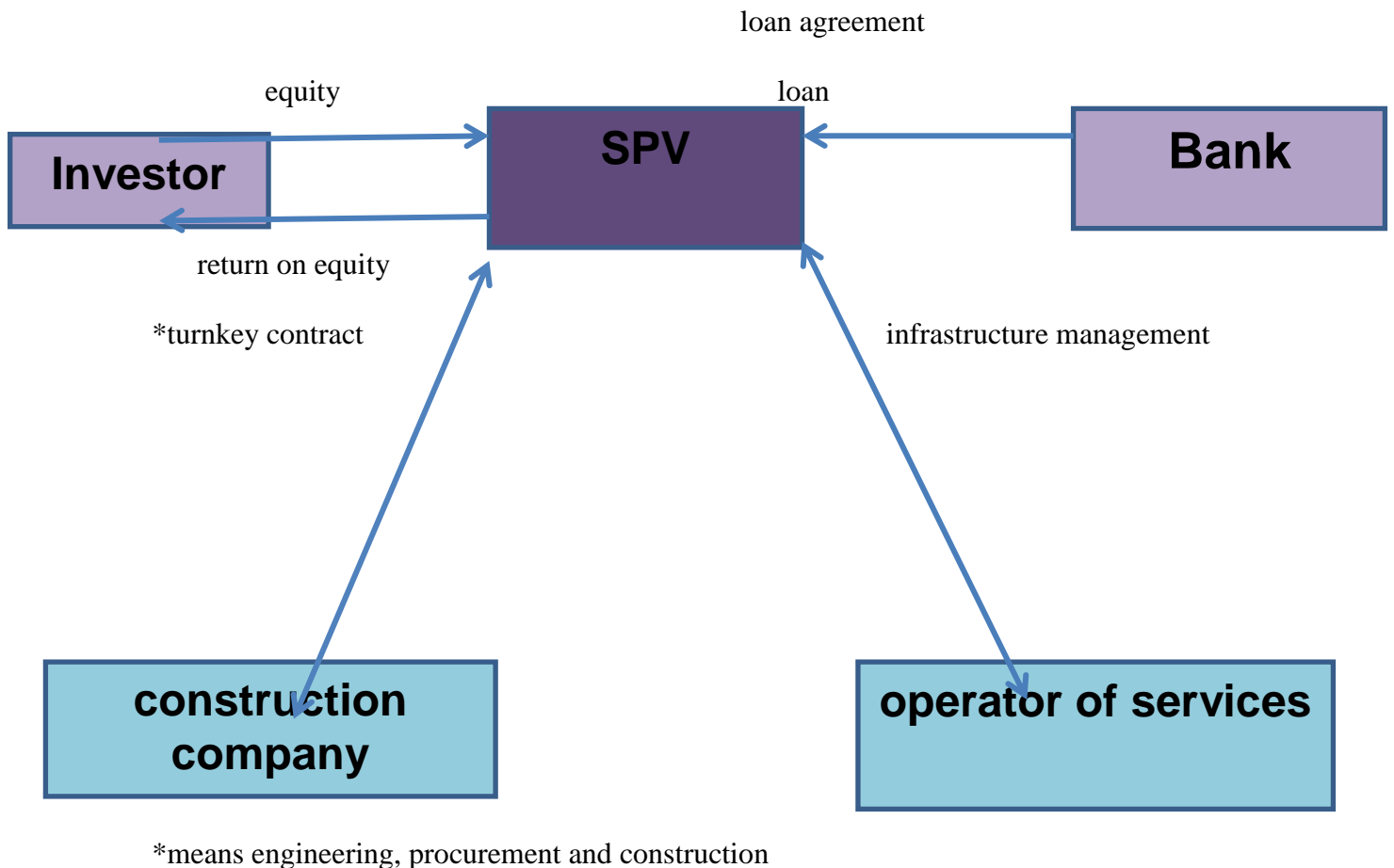
The transfer of payment claims towards the project entity from the public partner to the bank transfers the solvency risk from the public authority to the contractor. Compared with project finance, this facilitates to negotiate smaller terms of financing. Declaration to waive insufficient protection of transfers



moves the major risks back to the public partner, which means less incentive for private bidder to optimize lifecycle costs. Important is that the value of the transfer of these risks should be reflected in the economic evaluation. The illustration below shows the structure of the contract in this methodology.

Fig. 3. Daily assignment method





### 3.6 Sources of PPP finance

**Borrowed capital** (loan) is usually the main source of financing PPP projects, where the share of borrowed capital and risk distribution depends on the form of guarantees. In case of project finance financing banks usually require the debt to be accompanied by equity, to guarantee the claims of creditors, which is a signal for the public sector, in terms of private partner engagement merits. As an alternative to borrowed capital, PPPs are commonly based on the so-called mezzanine capital in the form of subordinated debt of





shareholders, which takes over some guarantee functions. In this case, the interest is lower, contributing to a reduction in the total cost of financing.

**Equity** is made available to a company for an unlimited period and serves as a guarantee against the risks undertaken by the company. The equity of a company compensates losses for debt. A capital provider takes a guarantee function for the contractor agreement risks of the project. As compensation and also to ensure control over such risks, it is entitled to participate in the activity and control of the company and has access to information.

**Senior debt** is provided to companies only for a limited time and subject to the terms of the credit agreement: inter alia on, duration, rate of interest, step-in rights and access to information. Capital providers require also specific guarantees from the recipient of the capital to reduce credit risks. This includes whether the provision of equity or an agreement with the so-called clause or third parties, such as, for example, guarantees or contractual step-in rights.

**Mezzanine capital** is a hybrid instrument, incorporating characteristics specific to both borrowed funds and own funds. Compared to equity, mezzanine capital has fewer decision making rights in the company, but involves less risk. Compared with senior debt, mezzanine capital is regarded similarly as pure equity, because it is subordinated thereunder. This means that it will be served after the senior debt, but before capital providers. In certain circumstances, mezzanine capital has an advantage, as it enhances social capital as a substitute for equity, which means more security and more lending options for a company.

### 3.7 Financing structure

During the construction phase borrowed capital is paid in installments, depending on the specific requirements related to advancement of the work, which means that the interest is charged only on the payments made. When the building is ready, the financing bridge (working capital financing) of short-term construction is transformed into a final long-term financing. Interest rates on borrowed capital are composed of reference interest rate plus a specific project margin, which depends on the structure of risk, project duration, all other credit costs and bank's expectations on its repayment.

Loans for smaller projects are often provided by one credit institution. Higher amounts are usually provided in the form of syndicated loans, where a large bank underwrites the entire loan to other credit institutions or club deals (where the debt is in joint ownership) for a better control over risks.

The capital may be provided either in advance, proportionally to the borrowed capital or under the payment obligation, at the end of the construction phase. Capital bridges are specific to PPP projects which obtain the available capital only at the end of the construction phase. In this case, the credit risk during the construction phase should be guaranteed by bonds issued by the project entity.

Share of equity for PPP projects with project finance depends very much on the specific nature of the project. This will include risks perceived in a national context, specific economic sector and individual risks of the project; especially if it involves a certain demand risk, the equity requirement will be much higher. If the demand and revenue risks are transferred to the private partner, the requirements of the financing bank regarding the share of equity are significantly higher. Many banks today will not finance projects with significant demand risk, such as projects involving user charges.





### 3.8 Capital providers

As there are different types of capital that can be used in PPP projects, there are also various capital providers. The equity is provided by private developers, including construction companies and capital funds and the borrowed capital - mostly by commercial banks or institutional investors, such as insurance companies, pension funds etc.

All capital providers will review the project before deciding to allocate capital. They will focus in particular on the project's inherent risks (own) and analyze them. A positive decision for investment or lending can be considered as a vote of confidence for the stability of cash flows and economic credibility of the entire project. Capital providers will continue to monitor the project over the life of the contract. This should be considered by the public partner as an additional beneficial function of control.

#### 3.8.1 Private investors

Equity can also be granted to PPP projects by sponsors and/or financial investors. The sponsors usually support the completion of the project by providing operational services (e.g. planning, construction, management services, etc.). Their objective is to achieve a reasonable profit participating in the project, while limiting their responsibility by creating a project entity (Special Purpose Vehicle). Financial investors, according to the risk to profit, anticipate their profits as a return of capital in the form of long-term stable financial flows or trying to maximize their profits with an output option.

PPP Capital Investors can be divided, according to the duration of investments, into investors in the primary market and the secondary market. Investors in the primary market are those who participate in project initiation and are therefore interested in the prospect of higher profits, assuming fewer risks at the project's initiation. When projects are built and become operational, project's primary investors typically seek to sell their investments, to release funds in order to reinvest in new projects. They sell their own capital to so-called secondary investors.

Investors on the secondary capital market in Europe are usually private equity funds, real estate and infrastructure funds, insurance companies and pension funds. PPP projects are considered special by investors as cash flows are at least partially covered by a top warranty partner, namely the public sector. Investors require a reasonable profit for capital invested to mitigate the risks they undertake. The result is that those investors require a higher return than creditors who have a contractual right to reimbursement.

#### 3.8.2 Loan capital providers

Loan capital is usually provided to PPP projects by commercial banks. As compensation, the banks apply an interest rate that depends on the risks they run with their capital. Given the orientation of the cash flow and limited liability of shareholders it may be deemed that debt providers are exposed to a relatively high level of risk, particularly in project finance. The risk of delay of payment or credit default risk is analyzed before loan approval after examination of project's technical, economic and legal documentation.

They check in detail cash flow projections and optional revenues. Besides providing a suitable capital, debt providers demand from PPP projects specific rights and safeguards that are part of the credit agreement. The beneficiary of the loan, which is the project entity, must meet the financing specifications such as, for

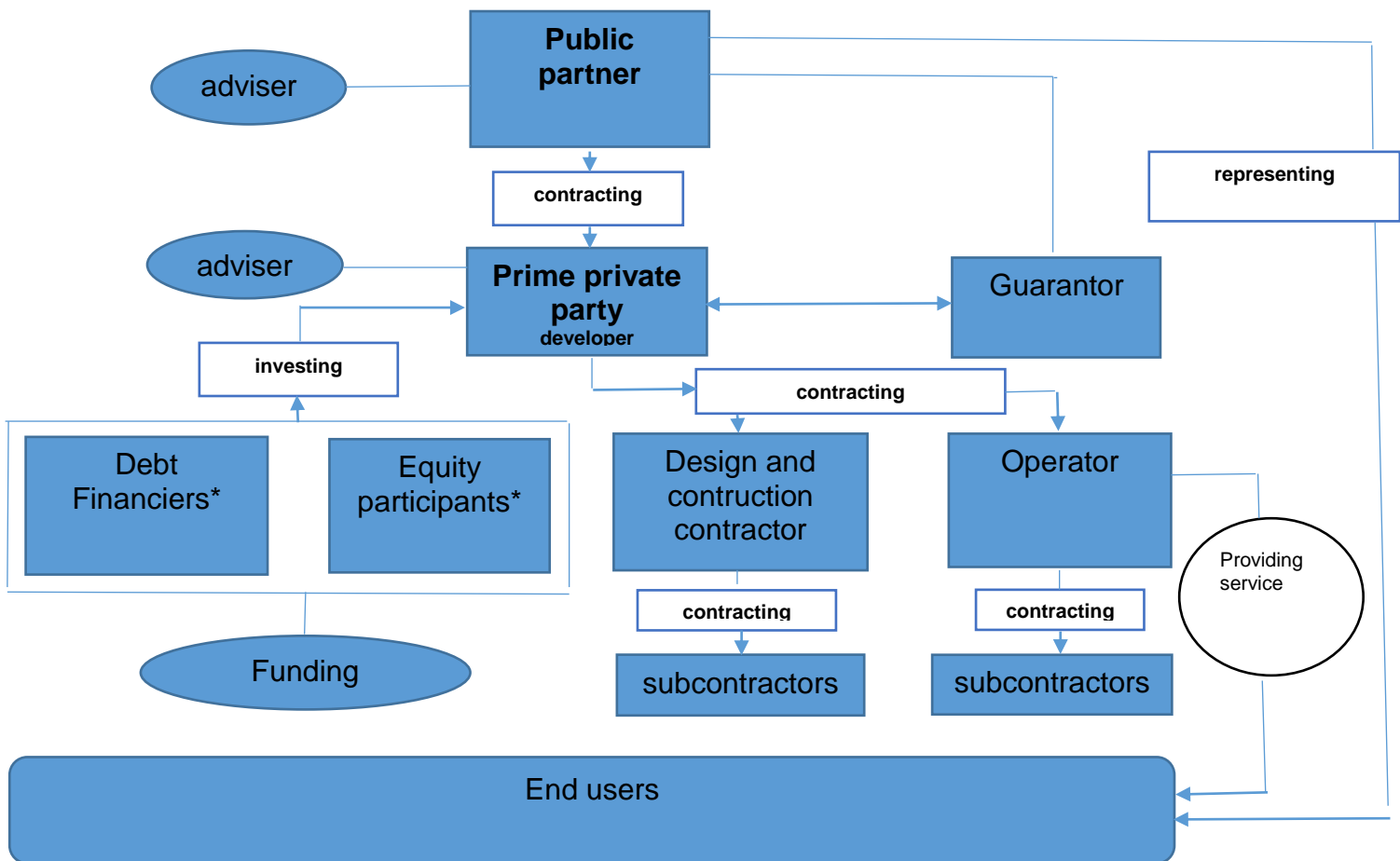




instance, the debt service coverage ratio (DSCR) and the so-called commitments. In case of failure to comply or in the event of default, payment of implicit dividends to equity providers is stopped.

Project entity must also establish reserve and liquidity accounts to service the debt and fund subsequent maintenance of physical assets. Debt service reserve account is an account on which a reserve amount is deposited to cover the interest and capital payments. Other significant suppliers of capital, usually in the form of senior debts are international development banks. In most cases they provide funding to projects at favorable interest rates compared to commercial loan rates. Instead, they almost always insist on having a high degree of control and management of the entire process of preparation and award of the project.

**Figure 7: Typical private party structure**



\* A typical PPP project can provide some 60-70% of the total funding requirement i.e. the ratio of debt to equity. In a PPP the lenders' security can be limited to the Project, comprising primarily the Project cash flows and presumably less to the investor's/sponsor's equity (a typical case for a concession contract). The sponsors rely therefore on the cash flow from charges in order to repay the loan. Consequently, the main assets that lenders can rely on as security are the *contract* between the public partner and the private partner and the *cash flows* coming from this contract.





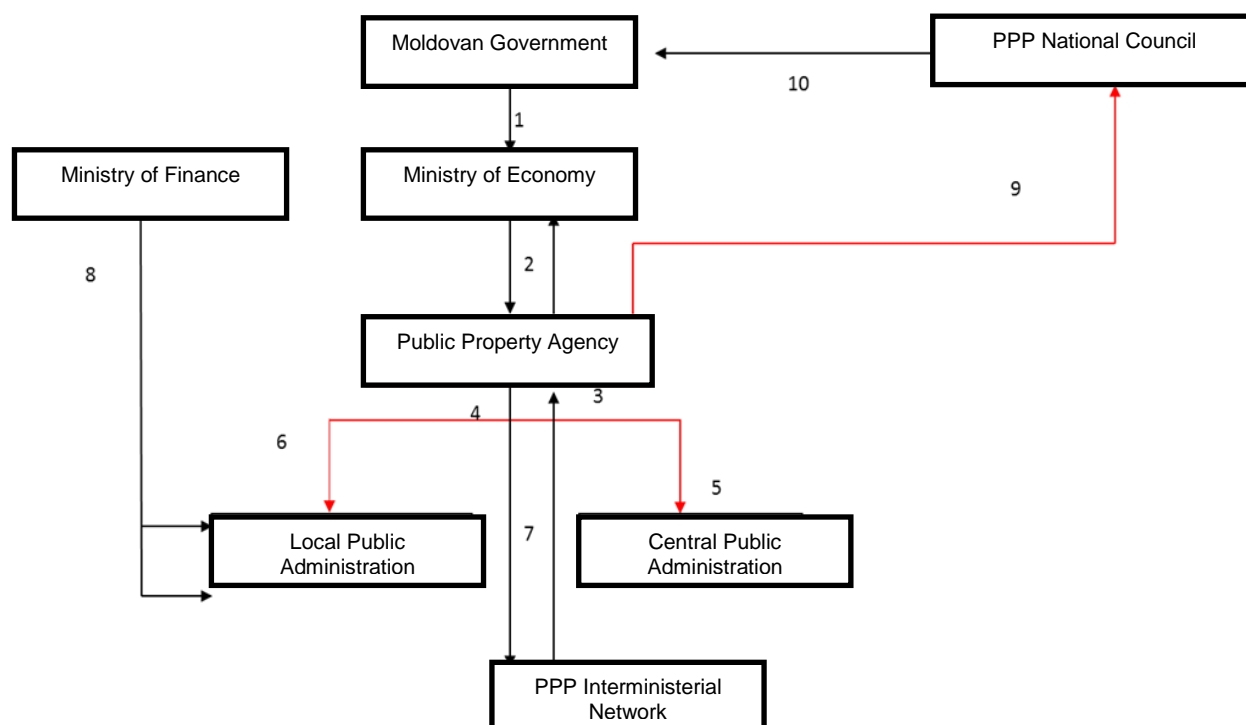


Nevertheless, the above, rather general approach, must take into the consideration rather high interest rate in Moldova at present which the private partner will pay on loans, so equity investors' share could be higher, and consequently, the ratio of debt to equity could be even in favor of equity.

## PART IV: MANAGEMENT OF PPP PROJECTS

Along with the entry into force of Law no. 179-XVI on PPP in 2008, the Government of Moldova created a special institutional unit within the PPA to coordinate PPP projects and their specific tasks assigned to various public authorities. As in most countries, the structure in question is responsible for policy development and further development of the framework conditions for PPPs and concessions, as well as the preparation and implementation of projects with practical support and assistance provided by the specialized advisory unit in PPA – the PPP Unit. The powers of all institutions involved (**Figure 3**) are provided in Chapter III of the Law No. 179 on PPP.

**Figure 8.**  
*Institutional framework in the field of PPP*





1. To approve policy documents and regulations, provide for the enforcement of law;
2. To develop PPP policies;
3. To implement PPP policies;
4. To coordinate and initiate national projects, endorse national and local feasibility studies;
5. To initiate, develop, sign and monitor PPP contracts within its scope;
6. To implement PPP policies at local level, as well as to initiate, develop, sign and monitor PPP contracts;
7. Coordinate all activities in the field between the central government and PPP Unit;
8. Examine proposals on state budget participation in PPP projects, monitor expenses from the state budget for PPP projects;
9. Providing secretarial work of NCPMP;
10. Consulting the Government in the PPP field

#### 4.1 Powers of public authorities in realization of PPPs

**Government of the Rep. of Moldova** – Public authority which has in its scope the approval of policy documents on PPP development and approval of regulatory acts for execution of the Law on PPP, designation of the public authority which shall conclude contracts with private partners in the case of PPPs initiated by the Government or central public authorities and other tasks under the law.

In order to ensure political support for PPP at the highest governmental level, all major issues related to PPP in Moldova, in accordance with article 11 of Law No. 179 of 10.07.2008 need to be approved directly by the Government. First, the Government takes a decision on the public property assets. Works and services of national interest may be considered to be implemented through a PPP and endorses the objectives of such projects. It is responsible for determining the requirements for the private partner selection, approval of legislation and policy documents in the scope of PPP, including standard documents and procedures that are considered necessary for the preparation and implementation of PPP.

**Ministry of Economy** – Central public authority responsible for drafting policy documents on PPP development in Moldova and developing proposals for amendments of legislative and regulatory acts and rules on projects designated for realization through PPP (Article 12 of Law No. 179 of 10.07.2008).

At the same time, the Ministry of Economy plays an important role in providing the necessary liaison between the Government and other stakeholders, especially because it is responsible to submit to the Government for approval the draft regulatory acts, which are necessary for the implementation of Law no. 179 of 10.07.2008.

**Ministry of Finance** – central public authority which has the competence to examine proposals on state budget participation in PPPs initiated and approved by the Government and to monitor the execution of the public partner expenditures from state budget for realization of PPPs of national interest.





In accordance with Article 13 of Law on PPP, Ministry of Finance is responsible for examining proposals involving state budget in realization of already existing PPP projects and is engaged in monitoring the expenditure of funds by public partners in relation to PPP.

#### 4.1.1 Executive and advisory public authorities

**Public Property Agency (PPA, also The Agency)** – Central Authority under the Ministry of Economy implementing policies in the field of PPP, coordinates the initiation of PPP projects nationally, endorses feasibility studies for PPP projects. The Agency, through its PPP Unit, provides the secretarial work of the National Council of PPP and the activity of Inter-ministerial PPP Network.

Regarding coordination for initiating PPP projects in Moldova, the key role is assigned to the Public Property Agency and its PPP Unit. As an implementing agency, which is under the Ministry of Economy, PPA is the first point of consultation for both public and private partners in all aspects of PPP and offers a range of advisory assistance to other public authorities involved in the identification and management of PPP projects. In addition, part of its tasks as a public authority relates to the preparation for endorsing all the above-mentioned Government Decisions, in terms of PPP projects objectives and development of standard documentation, selection procedures and general terms in the scope of PPP to be approved. Moreover, PPA provides overall coordination of all PPP activities at the national level.

**PPP Unit** – is a unit within PPA with specific powers in the field, such as:

- To coordinate PPPs initiation at the national level;
- To assist the public in identifying the objectives for PPP projects of national interest, develop general requirements concerning the selection of the private partner and PPP conditions proposed by the central public administration authorities on the basis of feasibility studies, their submission to the Government for approval;
- To identify gaps and barriers to efficient implementation of PPPs; submission of annual reports to the Government; publishing statistical analysis on PPP projects;
- To identify potential PPPs in the information submitted by the public partners and facilitate contacts between them and potential private partners;
- Approval of feasibility studies for PPPs of national and local interest;
- Dissemination of best practices and recommendations in the realization of PPP;
- Monitoring and evaluation of PPPs implementation;
- Providing assistance to public and private partners necessary to implement the Law no. 179 of 10.07.2008;
- Providing, at the request of any person, consultations in PPPs and delivery of trainings for public partners.
- Publishing advertisements and documents relating to the procedure for the selection of private partners on the website of the Agency;
- Keeping PPPs and risk implications in realization of each partnership.

**National Council of Public Private Partnership (NCPPP)**– advisory authority, unincorporated organization established to strengthen efforts in effective organization of PPPs and develop priorities and implementation of PPP strategies. The basic function of the Council is to assess state policy priorities and strategies for implementation of PPP in Moldova and monitoring of PPP at the national level. NCPPP was





approved by Government Decision no. 245 of 19 April 2012. Thus, the state policy in the field of PPP application, including activities within which PPA functions as an implementing authority and policy development in the field of PPP, where best practice cases, barriers and gaps in realization of PPPs are provided and coordinated by the NCPPP. The Council therefore plays an important role in the coordination of PPP on an overall national level, it evaluates its effectiveness and proposes changes within the Government on the current PPP situation, thus helping to create favorable conditions for investment. Whenever necessary, the Council has the right to suggest the creation of special working groups and to appoint experts responsible for preparing reports on specific issues.

**Inter-ministerial PPP Network** – is an advisory body of general competence, without legal personality, which involves representation of each central public authority within the network composed by two representatives that include specialists from every sector of the national economy for the successful implementation of projects of high importance. Moreover, that PPP Network is a platform for discussion, enabling central public administration authorities to benefit from a continuous flow of information, communication and institutional capacity building through training programs based on international best practices in PPP.

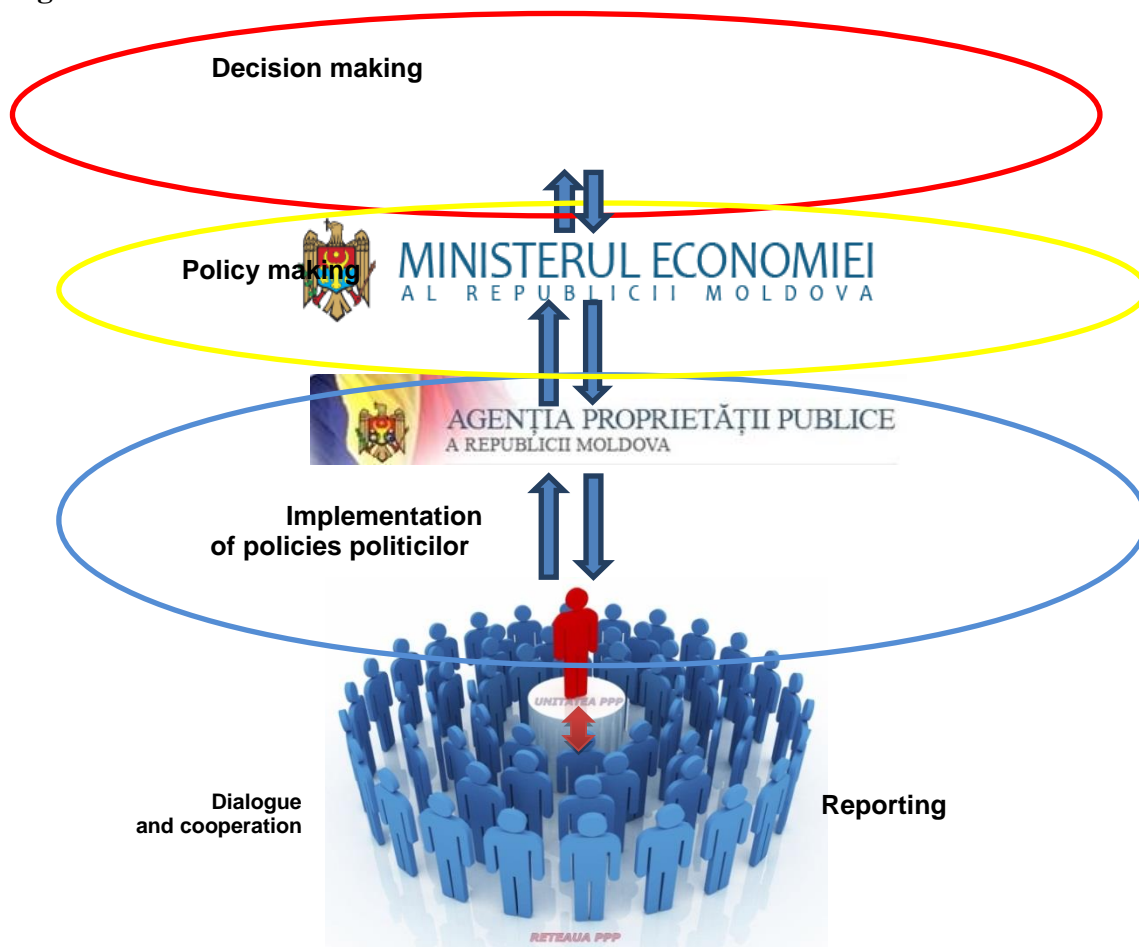
The coordination of Network meetings and mandatory training of its members is assigned to the PPP Unit within PPA. Competences of PPP Inter-ministerial Network:

- Ensure implementation of PPP policies,
- Identify gaps,
- Ensure implementation of PPP development programs,
- Dissemination of best practices in the field of PPP,
- Participation in training courses, study visits,
- Participation in the Commission for the selection of private partners,
- Ensure dialogue and cooperation with the PPP Unit on:
  1. *identification and coordination of PPP projects,*
  2. *identification of project objectives and conditions,*
  3. *implementation of PPP standard documentation,*
  4. *ensuring transfer of knowledge and best practices,*
  5. *advisory assistance.*





**Figure 9. Interaction of the PPP Network**



PPP Network was established in 2013 by GD 255 of 11.04.2013 on the creation of Inter-ministerial PPP network.

#### **4.1.2 Contracting authorities (public partners)**





In accordance with Article 11 of Law no. 179 of 10.07.2008, the Government is setting the powers of public authorities concluding PPP contracts. The contracting authority is then responsible for implementation of the project. In the Rep. of Moldova, there can be central public authorities and, in practice in most cases, one of the ministries listed as public partner in a PPP contract. They are responsible for the initiation of PPPs within their remit, having as a basis the State's public property, as well as development of feasibility studies if they intend to initiate PPP projects and subsequent monitoring of PPP contracts concluded.

Local authorities are contracting authorities responsible for implementation of PPP policies at local level, as well as initiating, developing, signing and monitoring of PPP contracts started upon their decision. Within direct competence of the mayor or chairman of the district council, where appropriate, is the power to sign PPP contracts, submit to the Agency copies thereof for registration purposes and ensure the monitoring and control of PPPs' realization within the jurisdiction of the administrative-territorial unit concerned.

An important role in this context is assigned to local governments (municipal and district councils, city mayors and chairmen of districts). In addition to approving the infrastructure and local public services, which are proposed to be implemented through PPP and the decisive role they play in the private partner selection process, their powers also include the monitoring of local PPP projects.

## 4.2 The process of PPP implementation

Potential PPP projects go through several stages prior to their implementation. The overall process can be structured in different stages. Each stage leads to the responsible decision makers. Entering a next phase always means more efforts and more costs, so that costs for amending or developing the project grow.

This chapter should provide an overview of the process of structuring projects from the moment of their identification until the end of the contract and should support the understanding of the process by each participant, in order to understand their roles and tasks, about who is responsible for decision making and what measures will follow in the process. The process can be completed with sub-sequences for each sector, providing more detailed information.

**Figure 6. Implementation stages of a PPP project**

<b>I</b>	<u>Pre-feasibility study</u> <ul style="list-style-type: none"> <li>- Responsible public authority in cooperation with PPA (PPP Unit)</li> <li>- general identification of a project according to specific needs, affordability and profitability</li> <li>- general applicability test to a PPP scheme</li> <li>- result: decision taken by PPA (PPP Unit to conduct a comprehensive financial-economic analysis within the feasibility study/budgetary cost estimates (MoF)</li> </ul>
<b>II</b>	<u>Feasibility study (financial-economic analysis for both options) (business case)</u> <ul style="list-style-type: none"> <li>- Responsible public authority in cooperation with PPA (PPP Unit)</li> <li>- comparing fictitious cost/efficiency ratio of PSC and PPP</li> <li>- result: decision to initiate the award procedure through a PPP, approved by PPA (PPP Unit/budgetary cost estimates (MoF)</li> <li>- budget allocation by MoF so as to enable initiation of the award procedure</li> </ul>
<b>III</b>	<u>Contract award procedure with the update of the feasibility study (business case)</u>





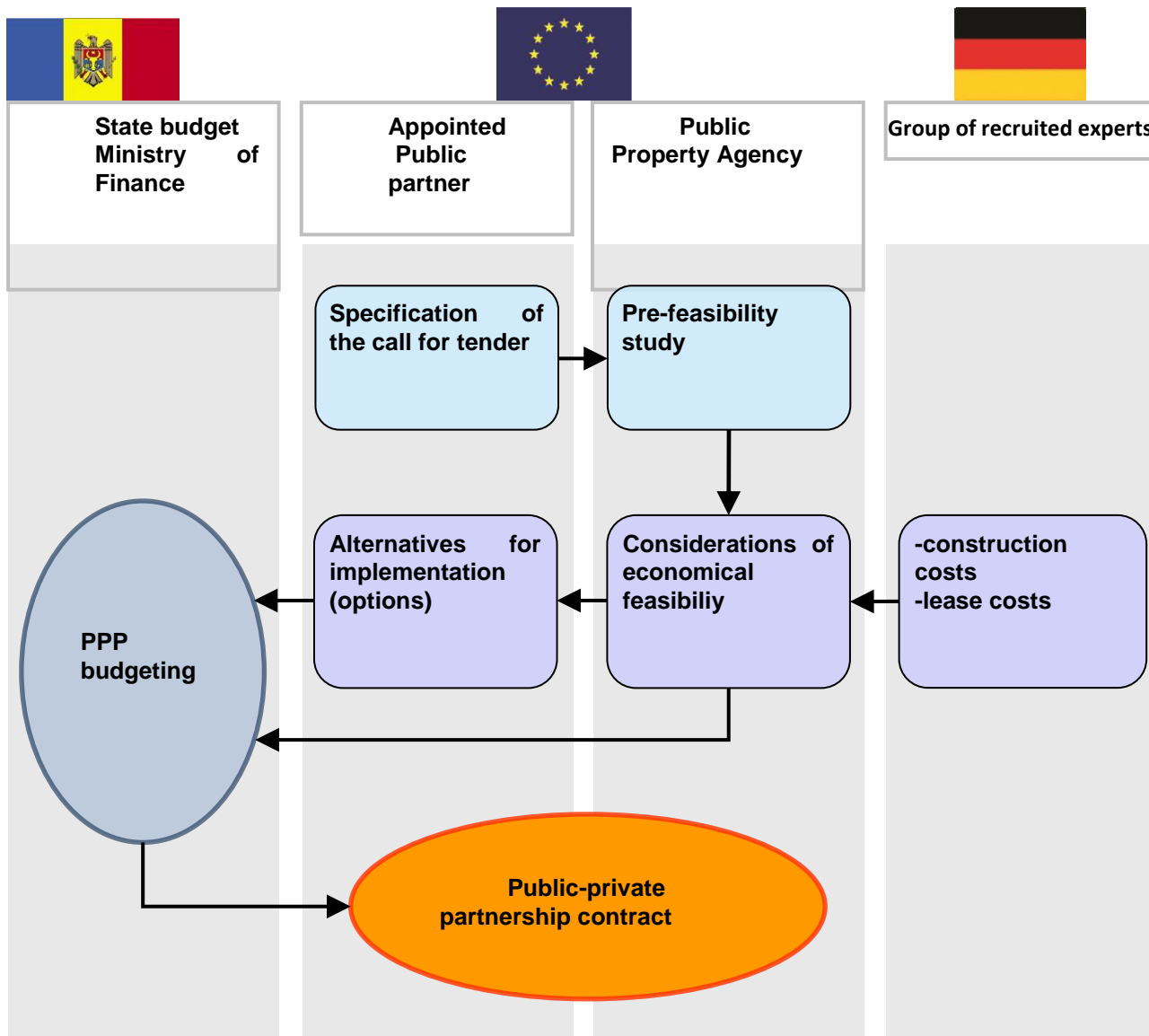
	<ul style="list-style-type: none"><li>- update of the business case and PSC calculations</li><li>- comparing PSC and private bid (PPP)</li><li>- Result: decision to award taken by PPA (PPP Unit/budgetary cost estimates (MoF))</li></ul>
IV	<u>Monitoring the grounds for business case</u> <ul style="list-style-type: none"><li>- achievement of objectives, evolution of costs, revenues and risks</li><li>- result: measuring success, experience related to PPP projects in general and contracting, databases (e.g. risk allocation)</li></ul>

At the first stage, a project must generally be identified in response to a specific need, allowing the general possibility to finance it, based on the cost-benefit analysis, which respectively, is emerging from a pre-feasibility study which outlines the chosen funding option. The pre-feasibility study should be developed mainly by the public authority responsible for potential PPP projects in coordination with PPA. Based on the pre-feasibility study a decision should be made whether the project could be feasible in general and could be realized in a PPP or not. Therefore, the economic analysis must be carried out over the entire life cycle of the project. In this respect, it is relevant for PPA to approve the results of the pre-feasibility study. Estimated costs for the entire life cycle of the project, when it needs to be subsidized, must be sent to the Ministry of Finance for the state budget planning for the coming years.

**Figure 10. PPP Central Public Administration management in the award of PPP contracts**







Next step in the structured process is the Feasibility Study which is initiated by the public partner. The business case must be calculated in deeper details and provide a comparison between project's realization by classical procurement or a PPP scheme. In this case, the competent public authority must create a public sector comparator (PSC), in terms of economic advantage or disadvantage of each option. In this phase of the project's realization a PPP scheme must be a fictitious option with assumptions deriving from the experience of other PPP projects and markets. Both options have to be calculated in the identical time frame. Comparisons between financial and non-financial benefits, costs and risks lead to the result whether a PPP project allows anticipating economic benefits or not (value for money analysis /net present value method and cost-benefit assessment).

As the results of the Feasibility Study are converted into a cost-benefit analysis, these data must be updated periodically when adjustments occur in the PSC or in the award procedure. At the end of the award process upon the receipt of final bids from the private partners, the cost-benefit analysis is to receive the final update. In the final analysis it is shown whether private bids are resulting in an economic advantage compared to the



updated PSC or not. In case of a positive result the project may be awarded to the winning bidder. The approval must be made through PPA, while major adjustments in the project, those resulting in higher costs from the state budget, in general, must be approved by the Ministry of Finance during the bidding stage. Final results of the comparison must be transferred to the Ministry of Finance for updating the state budget.

Over the life cycle of the contract, the project must be managed and monitored by the public partner. In this case, the public authority shall assess the capability for execution of obligations agreed in the contract. During the life cycle of the contract adjustments to the payment may be made, so that the updated costs are transferred to the Ministry of Finance for updates in the state budget.<sup>13</sup>

Different phases and tools for compiling economic analysis are explained in detail in the glossary and Chapters 4.6 - 4.10 of this manual.

### 4.3 Identifying a project

PPP projects have the same common goals of promoting social and economic welfare of the country and also the same problems of limited budgetary resources to achieve these objectives. Therefore, it is extremely important for Moldova to be able to identify and deliver potentially "successful" projects and at the same time to develop the expertise and capacity for identifying "failure" projects at an early stage.

#### **Response to a specific need**

All public investment projects must respond to a need identified. Such a requirement could be considered an action that would address a serious problem with regard to economic or social conditions of a town, city, region or even the entire country. A need is different from a wish, the implementation of which would be appropriate, but may be unachievable.

The needs are often expressed by various government policy documents related to different sectors of the economy. Governments publish these documents for consultation with the civil society. Experience has shown that most successful PPP projects are those that are motivated by a need identified easily. A good example of this would be a project that required to comply with a strict legal term on improving environmental conditions.

#### **Prioritization of projects**

In general, almost no country in the world can afford to approve all projects that demonstrate a positive economic value and governments, therefore, have to prioritize the projects. Logically, in order to ensure the best return on public investment, projects that obtain the greatest economic value are to be approved first. However, in practice it rarely happens that way. Political priorities are the most common reasons why those projects have an advantage over other projects.

Governments may decide that there are more important sectors of the economy at certain stages of economic cycles. Public officials involved in evaluating capital projects will be aware that their primary duty is to establish data and submit this data to governments that ultimately make the decision. In this context, it is easier to give preference to financially independent projects than to those that could be prioritized, because they have a limited impact on state or municipal budget. Other projects could be seen as mobilizers of private capital in exchange for limited public subsidy.





### 4.3.1 Determining the objectives of a project

There will always be many project ideas in any public authority. Therefore, it is important to have a strategic review process, thus, only projects that are able to meet the basic criteria will be developed<sup>13</sup>. At the central level only projects that support government policy objectives and goals of social and economic development of the country should be considered. The publication of such aspects provides transparency of intent and accountability for achievement or failure to perform as required.

A project can only aim to achieve a single policy objective or can aim to achieve more than one. Clarity of objectives provides a basis for examining the ways in which objectives can be achieved and also the basis to evaluate the effectiveness of post-project implementation.

In Moldova, the Government, according to its powers, approves the list of public property of the State and a list of works and services of national interest (see Annex GD 419 of 18.06.2012, which is updated periodically).

### 4.3.2 Evaluating the success of a PPP project

Evaluating the success of a project should be entirely related to the project objectives, ensuring at all times that the objectives are expressed in terms of results. If, for example, an authority in the field of health care wants to reduce deaths from heart attacks by 30% in 10 years, by building a number of regional cardiac centers, this presents a clear and transparent way to identify the degree of success which can be attributed to the project.

The economic objective should be as for the non-financial benefits to remain higher than the final costs of the project implemented, since financial goals should be based on asset availability on budget and time period<sup>14</sup>.

## 4.4 Project team

### 4.4.1 Project management

Technical work in the initiation and implementation of a PPP project needs to be carried out by a project team established by the public partner and with the support of external consultants, experts and specialists recruited by the public authority involved in project development, providing consulting and technical support to the team. The level of competence of the expert group and how the team is managed always will have a substantial impact on the outcome and quality of PPP projects. Administration, supervision and decision-making processes should be as efficient as possible. If potential investors in the project do not see these things, they will be worried that the project would be constrained by bureaucracy and could in the end, after a lot of wasted time and money, fail to be implemented. They most likely will refuse to participate in the bidding process.<sup>15</sup> Main responsible person for a major project (and PPP's are often major projects) should be the highest official of the public contracting authority. The project team leader, the executive manager of the

<sup>15</sup> Basic analysis and selection of projects which will meet the criteria could have already been developed within the national strategic plans. In this case, identification of the project in general already exists, however, is necessary authority's decision on initiation of this PPP project.





project, being subordinated to the principal responsible person, needs to have lengthy experience in a project of such importance.

It should also be noted that the project team, the working group established under the authority designated as public partner, has an executive role, as a consultative body, and being composed of experts providing advisory and technical support to the project team. Because it is recommended that important stakeholders within the authority are included in this Working Group, it will ensure that the most important problems will be brought to the attention of the highest official responsible for the project.

The experience over many years has shown that when the project team is composed of a large number of officials/specialists and when they receive the executive mandate, there may be projects that are compromised by trying to meet the demands of all members, in order to reach a decision. Also, when important decisions are based on bringing together a large number of people in a meeting, it delays significantly the coordination of those meetings. The risk that unforeseen delays are possible in general, is dissuasive for investors. Therefore, any potential tenderer/investor before committing to make a bid, will consider project's management.

Thus, according to international best practices the following principles can be applied within the team:

1. Everyone involved in the project must understand his/her role in the project and the roles of colleagues.
2. Everyone must understand who is responsible for what.
3. The Project Manager shall have the authority to make all decisions daily. The limitation of the general mandate should be rather liberal than restrictive.
4. There should be a direct reporting link between the project manager and principal official within the authority so as more important decisions could be taken quickly.
5. The Authority should avoid hindering the project with multiple committees/working groups/ advisory boards, etc. which could create confusion among the decision-making process and accountability arrangements, which could lead to delays in implementation. These bodies could be effective only if they have clear terms of reference and that it is clear to all stakeholders that they do not hold an executive mandate in the project.

#### **4.4.2 External consultants**

The main point of contact on consultations in all aspects of PPP in Moldova is the Public Property Agency (PPP Unit within PPA) and it is advisable to all stakeholders to direct their questions to this authority, first. However, there will always be many issues to be considered in any PPP project. Their level of complexity often requires external expertise, although the support of such external advisors is usually quite expensive. Therefore, it is important to start the assessment using the available capacities of the public authority and to resort to external advisors only for their specific, legal, technical and /or financial expertise.





**Figure 11. Examples of structuring specific services by categories**

Delivered services		
Legal advice	Technical advice	Financial and economic advice
(1) Preparation of a PPP contract  (2) Legal review of submitted bids	(1) Assessing the demand for services  (2) Issues related to land and property  (3) Development of agreements on the service level	(1) Developing the business case for the project (2) Research on the market (3) Evaluation of financial reliability and accessibility of the project (4) structuring financing requirements (5) Assistance in award procedures (6) Negotiations with banks

The public authority should begin by considering the areas of expertise that cannot be provided within their organization. It should list the specific services by categories. Also, there should be different lists of services required by the authority which could reasonably be provided: a specialist in law, a financial and economic specialist and/or a technical specialist. These lists should then form the basis "of bids for services" which will be issued by the public authority. A competitive procedure to find good advisers, as long as it is done correctly, will result usually in a good value for money. It is normal to acquire three different consulting firms for the three main categories of expertise. When they are appointed, advisors should become part of the project team to jointly work on the project.

When selecting external advisors for a PPP project it is recommended to focus on related experience that needs to be linked to the specific nature of the project and have a high level of previous experience in PPP projects, preferably in several countries. Particular attention should be paid to the experience of individual consultants proposed by the consulting firms, rather than the company's general experience. There is no sense in contracting the services of a firm, where the individual consultant who is sent to work on the project has no direct or relevant experience.

#### 4.5 Initiation costs of PPPs





Responsible public authorities who have decided to implement a project through a PPP must be prepared to invest substantial financial resources in project preparation. Feasibility studies, in particular, can be expensive.

**These costs may be reduced in case the public partner already has experience in implementing PPP contract models. It should also be borne in mind that many of these costs would need to be covered in a well prepared conventional funding project. It should also be noted that the funds invested in training of own staff is an investment in the quality of any project. The reason for high costs of that special type of training is due to the limited number of qualified experts in developing a PPP project.**

## 4.6 The Content of a PPP Pre-feasibility and Feasibility study

### 4.6.1 Pre-feasibility study

Prior to any serious consideration regarding the implementation method (whether a project will be realized through PPP or the classical procurement scheme), the public authority responsible should develop a document (frequently named a pre-feasibility study)<sup>16</sup>, which investigates the key parameters of the proposed project.

Such a pre-feasibility study should include information regarding the following aspects:

1. General description of the project, sector, location, summary of current situation (status of project preparation and documentation).
2. Project's correlation with Strategic development plans of the public partner.
3. What are the project's objectives in terms of results?
4. What will be the total duration of the project, including planning, construction and operation? Legislative acts, international agreements governing the field, what options are available to achieve these goals?
5. Options should be considered for benefits to be realized.
6. Options should be examined in terms of costs to be borne. This is not only the anticipated initial capital, but also the operational and maintenance costs anticipated for the entire life of the project.
7. It is possible for the amount of benefits to have a value greater than the amount of costs?
8. The risks involved in each option should be considered. Are there any unacceptable risks in relation to the objective?
9. What would be the best option for project implementation? Would the private sector capital engaged in PPP realization turn out more profitable than public funding? If so, why?
10. Is there sufficient market interest in such an implementation?

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<sup>16</sup> A Pre-Feasibility Study or similar works in the first phase of the project development illustrate the general structure of the project, the conditions (economic, environmental, financial, social, environmental, legal, etc.), project goals, etc. As a result, the study shows if the project is necessary, affordable and whether possible alternatives are suitable to achieve objectives. Based on the study or within it should be possible to estimate whether a project could be suitable for a PPP scheme.





11. Does the public authority responsible have the requisite qualifications amongst its officials to implement the project?
12. A recommendation to proceed or not with the project and a statement of the preferred option for matching the objectives with the preferred implementation strategy.
13. A description of the work plan and how the project will continue. This document will list the actions and a temporal plan (program) on the delivery terms of each action.

The results of the feasibility study should give relevant answers to decision makers on the further development of the project. Pre-feasibility study will answer several questions about the project and provide relevant information to decision makers.

**A pre-feasibility study** is the foundation of the project's profitability analysis. The given analysis provides the general project's outline (e.g. range of construction works, project duration, etc.) and different options for their achievement. In this regard realization of the project through the classical method or the PPP scheme is different in terms of the project's implementation by the public authority, because many tasks or parts thereof may be given to the private partner (e.g. construction works, financing activities, risks), while the public partner assumes the role of monitoring the contract, in the case of payments to the private partner. In the next phase, the profitability analysis is transferred as a basis for feasibility studies and subsequent analysis.

Profitability analysis should be considered a dynamic document that should be updated periodically, with the advantage of new information or more accurate data. Given that a pre-feasibility study seeks only the approximations of costs and benefits, it is important during project planning to study the events that could affect the initial assessment. Such events may include construction price inflation, changes in economic and financial conditions (national and international) and social conditions.

A significant change or a series of small changes combined could be enough to change the initial opinion on the feasibility of the project. While the final decision to proceed or not requires the decision of the public authority responsible, it should be recognized that in the case of a PPP project, an unfavorable feasibility study or unfavorable profitability analysis will seriously undermine the prospects for receiving adequate support from private bidders and, of course, from their donors.

Profitability analysis for so-called "good practices" is continuously updated to the point in time the financing documents are signed to recognize the final "real" values of a project. This process of updating the project's development facilitates an 'ex post' assessment which can demonstrate how the project actually evolves in relation to expectations from the profitability analysis. The advantage of that exercise is important for the identification of which then can be more easily identified and can be more easily avoided in future projects, respectively.

#### 4.6.2 Feasibility study

In the Feasibility Study, Prefeasibility Study findings should be analyzed more deeply. Approximations of costs, benefits and risks should be replaced with stable and detailed data. In addition, the feasibility study could include relevant data and information<sup>17</sup>. At least the Feasibility Study shall allow decision makers at this

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<sup>17</sup> For instance, specific planning of maintenance works within the duration of the project is linked to the availability of the asset. Availability is often part of the draft regulations, especially when payment mechanism is based on availability, as it must be balanced with public authority (e.g. Maintenance works to be carried out in school buildings during road maintenance should not be carried out during peak hours, etc.)



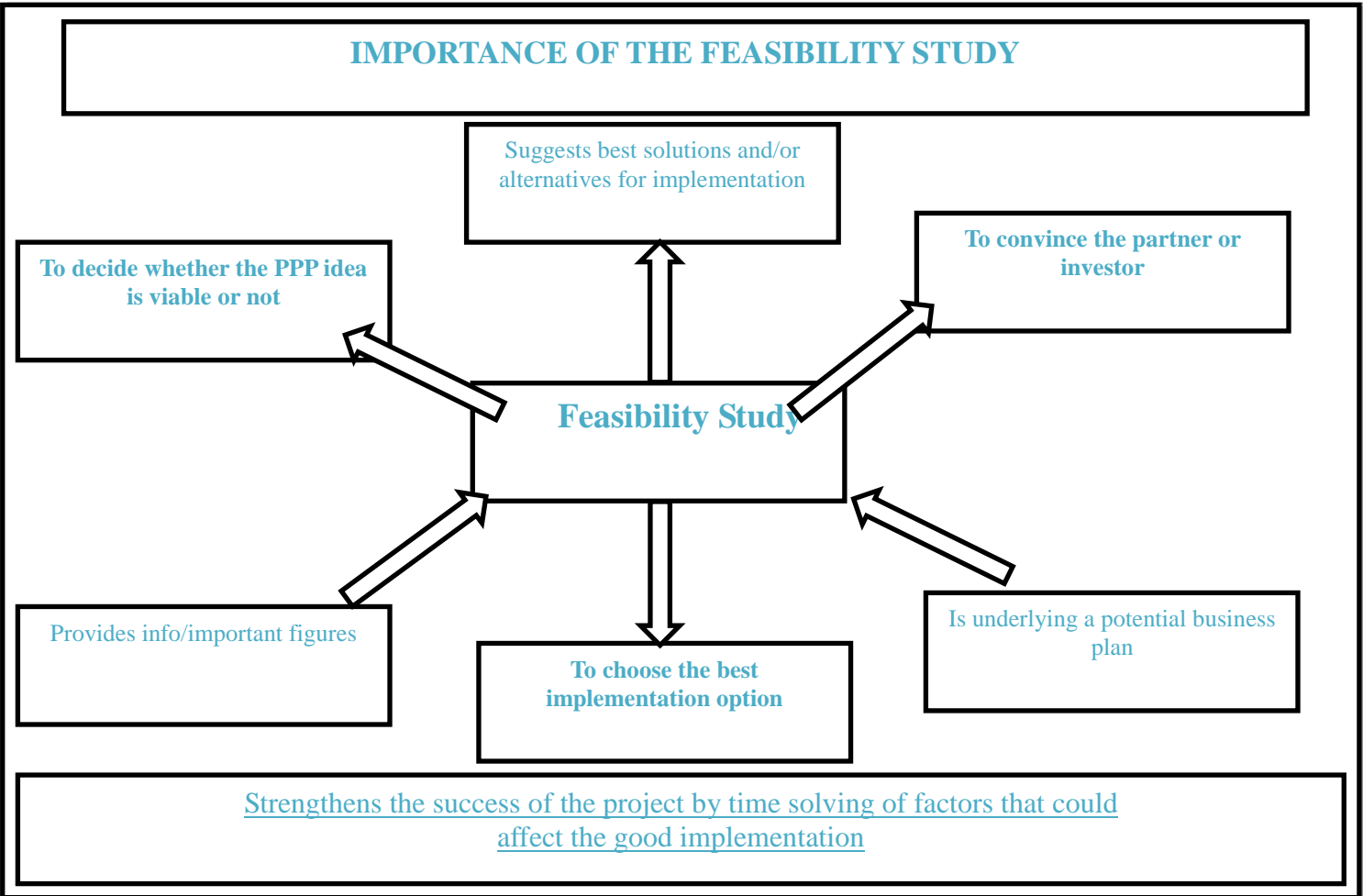




stage to decide whether a project could be awarded to a PPP procurement or not. You also need to consider the adjustments to the project outline and profitability analysis. In this regard, the profitability analysis still needs to be updated periodically during the award, until the project could be assigned to a private partner.

The following illustration shows the importance of the feasibility study along the entire PPP process, not just at the inception.

**Fig. 12 Importance of the feasibility study**



Introduction and Scope of the Feasibility Study	A short outline of the nature of the project, the scope of the feasibility study and the key issues to be addressed
Initial Output Specification	To define the output requirements for the project in the context of a PPP project implementation, compared with a conventional scheme





Demand Assessment	To determine the need for the project concerned
Preliminary Risk Assessment	This should identify the significant risks in the project (including statutory process risks) and considers their optimum allocation between the public and private sectors in the context of PPP contract alternatives. It should also develop the likely cost impact of each major risk to both public and private parties;
Legal Viability Assessment	Which investigates and reports on specific legal aspects of the project, where relevant
Stakeholder Consultation	Which should consider the issues likely to affect all interested parties (known as “stakeholders”), with particular reference to impacts on staff, and the scope to engage them in the PPP process
Value for Money (VFM) Assessment	Which should provide an initial quantitative and qualitative review of the cost effectiveness of each of the procurement options (i.e. DB/DBO/DBOF/Joint Venture/conventional route, etc.), having regard to potential advantages and disadvantages in each case. The VFM assessment should also include a Precedent Review, i.e. a review of experience with similar types of contracts;
Market soundings on the three major elements of the project (i.e. construction & development; facilities management; private sector finance)	to establish the following a) previous experience with the type of project involved b) familiarity with PPP procedures and concepts c) determine general market interest in the development d) discuss different payment mechanisms that could be used e) identify appropriate risk allocations
Bankability Assessment	Which considers whether the project is “bankable”, i.e. whether it will attract private finance. This element will only be needed where it is likely that the project will require substantial private finance e.g. from investment bankers, to carry it out; and
Procurement Options Selection	Main Findings which will summarize the main finding from the different sections of the report and draws these together to make clear recommendations on the way to proceed with the project including the selection of the appropriate procurement procedure.

Local Authorities should consider setting up a Steering Group to whom any consultants engaged to carry out the feasibility study should report on a regular basis. This is to help ensure

1. that the study remains focused on the issues to be addressed, and
2. that the study is completed within a reasonable timeframe.

Another detailed outline of the content of a Feasibility Study is attached to this Manual in Annex IV. Further instructions on drafting the feasibility study can be found in Regulation on the approval of standard





procedures for the selection of the private partner approved by Government Decision No. 476, Section 2. Methods and tools are explained in the next chapter "Evaluation of potential projects and risk management."

#### 4.7 Evaluation of potential projects and risk management

Means of implementation and funding of a project should not have too strong of an impact on the process of evaluating and selecting projects. An inefficient or unprofitable project will always remain a failed project and a poor form of PPP implementation cannot magically turn into a good one. It is therefore important to use a single system for projects evaluation, including projects financed from the budget, donors or through PPPs, to ensure consistency and fairness in setting the priorities. The alternative would increase the risk of developing parallel systems, which means:

1. Fragmentation between capital and recurrent sides of the budget and projects that are approved without adequate consideration of resources for future operational costs and maintenance.
2. Increased risks of future fiscal shocks if express or contingent liabilities materialize.
3. Lack of coordination between central government responsible entities, leading sometimes to double programming.
4. There should be a single institution able to provide a single coherent overview of the activities of social and economic development of the country.
5. It would be difficult to ensure that all approved projects are accessible.

The implementation of any individual project as a PPP should always lead to a better „value for money” compared to the implementation by conventional means. Jointly with other public investment projects, PPP projects should be selected only after the cost-benefit analysis (CBA), and net present value method (NPV) will demonstrate that the project is profitable.

Also critical to the selection of projects is a full understanding of the competitive environment for PPP projects in the chosen sector. In most cases, there are only a few companies worldwide that have the ability to engage in PPP projects on a larger scale. Sometimes, there are more proposals for projects than potential bidders. If, for example, the implementing authority wants to procure a healthcare project through PPP, it should be sure that there is a large number of similar projects competing in neighboring countries, because this will affect the chances of success. Therefore, it is important to consult with PPA, which should have information available about the PPP market in all sectors.

The fact that there are more projects than resources and their financing in the private sector, should keep public authorities aware that their projects are prepared at the highest level of quality, unless the chances of concluding a proper PPP contract will remain low. When properly implemented, PPP projects have proved to be a valuable tool for the effective realization of many types of infrastructure and public services projects. When implemented badly, they can leave a legacy of debt and disappointed expectations over several decades.

As mentioned in Chapter 4.1 project development process goes through different phases. The following elements of value for money ratio are focused on whether a project should enter the phase of bidding or not, and the decision to award the project to a private bidder. Therefore, the methods described here should be used in both stages and calculations and documentation needs to be updated regularly during the award process. In addition, it is recommended to use the very same methods of calculation set in the pre-feasibility phase, when existing data could be used. It is recommended to use the same method of calculation as it is traceable, decision makers and intermediaries are familiar with them and updating with real data is simpler.





#### 4.7.1 Data gathering

Obviously calculations on value for money are based on relevant data. Thus, the requirements for data gathering derive from the method of calculation. In particular, the feasibility study must reflect all data (costs, revenues, risks) and calculations throughout the project life, separated into different elements of a PPP project (e.g. construction works, subsequently separated in maintenance works, site works, etc.). It is useful to develop a standardized chart for data collection where updates can be made easily.

The list below shows the basic requirements for data:

- Data Nomenclature
- Date of collection
- Status of data (some existing data could be sufficient, other may need to be updated)
- Data format (with/without taxes)
- Data for each year of the project

Data collection is the basis for identifying risks, because risks are inherent in costs and revenues. Risks could arise throughout the lifecycle of a project and could have a relevant impact on the calculations and therefore, on the decision and budget.

#### 4.7.2 Risk identification and assessment

It should be preliminarily pointed out that each project involves several types of risks, even when a project is only intended to build an asset. Negotiations on the allocation of risks with potential private partners are held during the award process. For all PPP projects, all project risks must be identified and evaluated, in order to decide on best allocation of risks.

So, the risks are allocated to the partner who is in the best position to manage and influence them, the private partner will put a price (usually known as collateral) to risks allocated to him and will take them into the account in his bid. Quantitative risk assessment usually consists of calculating the so-called values of risk: risks identified are then prioritized according to their likelihood and expected level of related damage.

$$\text{risk value} = \text{likelihood of occurrence (in \%)} \times \text{level of damage (in \%)}$$

If the risks can be covered by commercial insurance, the insurance premium to be paid should be used as a basis for comparison. In the early stages of analysis, even raw data material should be used for the first risk assessment, because it could have a significant effect on the costs of a project. In some cases, it is useful to change the terms of the project (e.g. major risks identified in the last years of a project could shorten the duration of a project).

It is recommended in the later stages, to assess risks in collaboration with several participants. It is particularly important that technical experts from the public authority, with specific knowledge about the project, take part in the evaluation. In the best case scenario these experts are involved in the whole process of award and are also responsible for data collection in these areas.<sup>18</sup> Within the authority, based on risk assessment, a possible allocation of risks will be developed. At the opening stages of the project (e.g. feasibility studies) it is demonstrated that risks can be transferred to a private partner in a beneficial way.

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<sup>18</sup> Usually, technical experts cover an element of the project, for instance: design, build and operate. Moreover, they should be responsible for updates in their field. This means data collection, identifying and evaluating risks, as well as update thereof.





Therefore, the public authority assesses risks and allocates them in a risk matrix. Subsequently, in the award, information about reviewed risk allocation is provided to private bidders, while some of them could be objects of negotiations.<sup>19</sup>

With reference to article 35 of Law no. 179 of 10.07.2008, in 2013, a risk matrix was approved. It is in more detail elaborated in The Order on Approving the Project Risk Distribution Preliminary Matrix No 143 dated August 2, 2013 of the Ministry of Economy (Official Gazette, No 182-185/1269 dated August 23, 2013), which is attached to this manual, as Annex I. Regarding the matrix, some risks may not be relevant to a particular project.

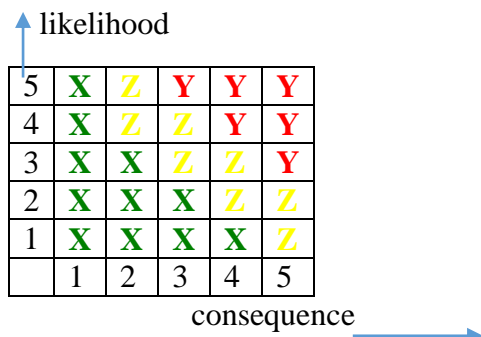
### 4.7.3. Risk Matrix

In determining the level of risk associated with a PPP project, two key elements require consideration:

- Likelihood: How likely is it that the potential risk will occur?
- Consequence: What would happen if the potential risk eventuates?

The Risk Rating Matrix (Figure 13) is typically used to determine the level of risks identified within a PPP Project. The level of risk for each root cause is reported as low (green), moderate (yellow), or high (red).

**Figure 13.** Risk Rating Matrix:



The level of likelihood of each risk root cause is established utilizing specified criteria (Figure 14). For example, if the root cause has an estimated 10% percent or less probability of risk occurring, the corresponding likelihood is Level 1.

**Figure 14** Levels of Likelihood Criteria:

Level	Likelihood	Probability of Occurrence

<sup>19</sup> This risk matrix (in an aggregate version) is granted to private partner with a communication memo (e.g. site risks allocated 100% to private partner). However, the same document may reveal some risks for negotiation or exclude them out of negotiations. Within negotiations with private partners it is important for public partner to have knowledge of risk assessment from the perspective of risk evaluation and allocation thereof to the private partner.





1	Not likely	~ 10 %
2	Low likelihood	~ 30 %
3	Likely	~ 50 %
4	Highly likely	~ 70 %
5	Near certainty	~ 90 %

The level and types of consequences of each risk are established utilizing criteria such as those described in Figure 14. However, a single consequence scale is not appropriate for all PPP projects. Continuing with the prior example of a root cause with less than 10 percent probability of occurring, if that same root cause has minor impact on performance, then the corresponding consequence has minimal or no impact on budget for this risk. (the risk is e.g. that the private party would step out of the PPP Project during its execution – this likelihood is rather low, but the consequences would be high)

**Figure 15.** Tentative Levels and Types of Consequence Criteria:

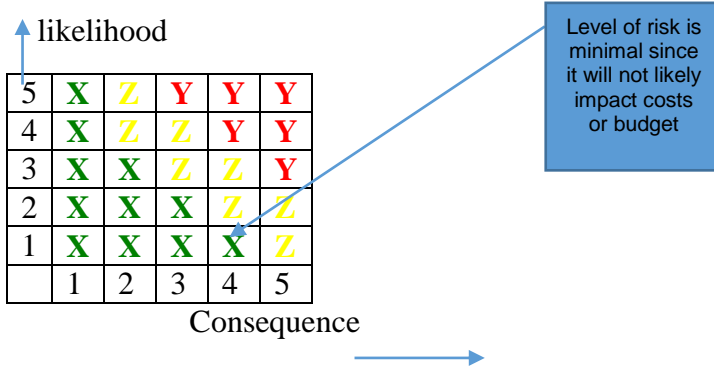
Level of consequences	Performance	Cost or budget impact	
1	Minimal or no consequence to performance	Minimal or no impact	
2	Minor reduction in performance or supportability can be tolerated with little or no impact on PPP Project	Budget increase or cost increases < 10 % of budget	
3	Moderate reduction in performance or supportability with limited impact on PPP Project objectives	Budget increase or cost increase < 50 % of budget)	
4	Significant degradation in performance or major shortfall in supportability; may jeopardize PPP project success	Budget increase or cost increase < 70 % of budget	
5	Severe degradation in performance; Cannot meet key supportability threshold; will jeopardize PPP Project success	Exceeds budget threshold	

The results for each risk are then plotted in the corresponding single square on the Risk Rating Matrix. In this example, since the level of likelihood is "2", but possible consequence as high as "3" the corresponding risk is reported still green "X," and therefore low, as shown in Figure 16. Expected risk impact for cost and schedule are automatically categorized based in Figure 16 below. At this stage of assessment, the impact/consequences are classified as Very High, High, Medium, Low or Very Low.





**Figure 16.** An Example of Risk Reporting



#### 4.7.4. Risk Evaluation

Once the likelihood and consequence of the identified risks have been analyzed, it is necessary to evaluate and prioritize the risks so that the most significant risks are treated first. One way of doing this is to rate the specific risks as either extreme, high, moderate or low, depending on the combined ratings of the likelihood and consequences. The Risk Rating Matrix provides guidance on how risks can be prioritized in this way.

One of the following options is selected to define the cost impact as a percentage of the baseline project cost estimate (value of a PPP contract):

**Figure 17.** Cost impact as a percentage of baseline PPP project cost estimate

Rate of impact	Level of cost impact
high	Greater than 25%
significant	10% to 25%
moderate	3% to 10%
low	1% to 3%
negligible	Less than 1%

#### 4.7.5. Risk Treatment

Many impediments exist to risk management implementation, however, the PPP project team must work together to overcome these obstacles. One good example is the natural reluctance to identify real PPP project







risks early, for fear of jeopardizing the support of the PPP project by decision makers. Another example is the lack of sufficient funds to properly implement the risk mitigation process.

Depending on the level of risk identified, the following risk treatment options may be considered:

- a. *Retained risks*, i.e., risks for which the public partner bears the costs, e.g., the risk of delay in gaining project approvals;
- b. *Avoidance of the risk*;
- c. *Reduction of the likelihood of occurrence*;
- d. *Reduction of the consequences* (e.g. contingency plan, should the risk occur);
- e. *Transferrable risks*, i.e., risks fully transferrable to the private sector.
- f. *Shared risks*, i.e., risks that are shared based on a combination of the above two allocations due to the nature of the risk.

#### 4.7.6 Risk management

Risk management is the identification, assessment, prioritization and allocation of risks followed by instruments to minimize, monitor, and control the probability and/or impact of unfortunate risk events or to maximize the realization of opportunities, with its all phases meticulously and diligently pursued. Risk management should begin at the earliest stages of PPP project planning and continue throughout the total life-cycle of the PPP project.

It is an organized methodology for continuously identifying and measuring the unknowns. 1. Establishment of the context, 2. Risk identification 3. Risk prioritizing and their allocation, 4. Developing mitigation options by selecting, planning, and implementing appropriate risk mitigations; 5. tracking the implementation to ensure successful risk reduction.

Effective risk management depends on risk management planning; early identification and risk analysis; early implementation of corrective actions; continuous monitoring and reassessment; and communication, documentation, and coordination.

In general terms, four risk-sharing principles are accepted as best international practices for PPP projects:

1. Each identified risk must be accepted by the party that is in the best position to manage the financial consequences of its occurrence.
2. For those risks that neither party can manage effectively, usually an insurance is used to hedge the risks (in conventional procurement the State often provides self-insurance).
3. Transferring unrealistic risks to private sector creates a risk per se.
4. For risks that cannot be handled by the private sector, a premium for risk management will be charged.

Some risks in a PPP project can be easily identified as generic risks, while some may be specific to the nature of the particular project itself. Similarly, certain risks of a PPP project can be assigned logically and





easily, for example: construction risks are quite clearly borne by the construction company as it relates to its specific activity - and the public partner, in general, is not involved directly in construction works.

Another example might be the risk of a law changing, which would have a negative effect on the specific project. This is the area in which the Government will logically accept the risk because governments are responsible for legal framework and therefore, may influence that risk occurrence. Investors and construction companies are not involved in the approval process of the legal framework and cannot manage this risk effectively. They could certainly manage that risk by adding a risk premium to the price of the project, but since the government assumes payment for that price, it would be counterproductive for it to transfer this risk.

One of the most difficult areas of risk management is the demand risk (sometimes called market risk). In early PPP projects it was often accepted that private companies could manage a given risk depending on how much an element of infrastructure was used. This is believed to be predicted by studying historical data and extracting the forecast for future demand. In fact, in many areas of private businesses such activity is being conducted today. However, in the last two decades there were several examples of projects that had become defective due to inaccurate assumptions and over-optimistic forecasts on the demand.

Regarding the object of risk, it must be pointed out that similar opportunities are inherent in each project. In this regard, opportunities which could increase revenues must be identified (e.g. to enhance activities easy to use in road traffic, to allow traffic volume growth by providing detailed information via the Internet, on the roadside, etc.) or reduce costs based on the use of the best technical solutions. Regarding risks some measures to prevent or reduce them may be implemented. In general, risk management increases project profitability. The contract can assist both parties in the project with incentives to have ambitions on effective risk management. Therefore, the benefits (or low costs) that arise are offered to the partner who has assigned the risk (or opportunity) or may be shared in case of a jointly shared risk.

Additionally, the risks will be monitored. Some risks are not well known before starting the project. Thus, project conditions could be changed or in the meantime, better solutions to address the risks could have been identified. Project monitoring would allow saving money and prevent cost overruns. It also applies if the transfer results from monitoring a database for certain sectors. Because duration of projects covers the entire life cycle (e.g. 30 years), forecasting risks is not easy and the experience of public authorities working with the annual budget is not very extensive. Each risk identified may also be useful for the preparation of future projects.

#### **4.7.7 Value for money**

When a decision is taken to investigate a PPP method of implementing a project, it would be anticipated that the PPP form will be more efficient than conventional financing, with a better quality and lower cost (value for money). If so, these benefits must come from:

1. Overall cost optimization through implementation of a cost approach to life cycle cost.
2. An ideal distribution of risks between the private and public sector.
3. Optimizing the possibility of incentive structures for private partner efficiency.
4. Transfer of knowledge from the experience of the private partner in a comparable project in the country and abroad.





It is also expected that a PPP project contributes to the construction or maintenance of public infrastructure, which as a consequence enables the responsible public authority to focus on providing essential public services as its core business. Practice also shows that PPP project experience can help optimize projects conducted in a traditional manner, through better readiness and understanding of risk sharing.

PPP is just one of the implementation options available for the public sector. Choosing the implementation option should be supported by a business case. This analysis should mark a parallel between conventional and alternative options, while remaining neutral and open to all possibilities. Value for money options can be evaluated only on a case by case basis.

#### **4.7.8 Business case**

Business case is used as a tool to support decision-making. It is intended to help identifying the best economic alternatives related to implementation options. The business case model is also very useful as a management, guidance and monitoring tool, because the effects of the business case fall under the drafting and planning processes of the project. Finally, it provides a methodology to identify the economic costs and benefits proposed in relation to actual results, after the project was implemented and became fully operational.

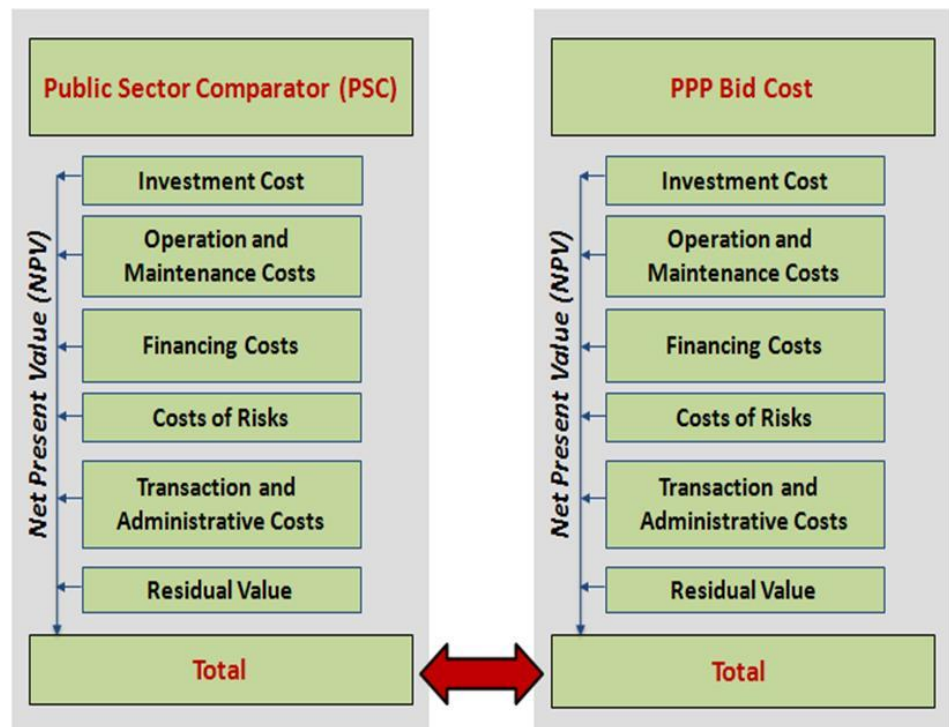
The business case will consider the most important quantitative and qualitative aspects, to enable a comprehensive assessment of the economic benefits.

#### **4.7.9 Public sector comparator**

Public Sector Comparator (PSC) is the benchmark by which the economic advantage (or disadvantage) of each option can be economically measured and, in economic terms, provides the final comparison for the most advantageous bid obtained from bidders. To ensure comparability, the PSC options must set the same conditions as the options to be compared with. For comparison, the same items must be calculated, while compared per se, the PPP option is represented by the costs of payments, tasks and risks that are assigned by the public partner. Obviously, PSC calculations should be realistic and comprehensive in every step of the analysis, to have a valid basis for comparison. It is important for a private partner selection process and for competition within the current project and future projects, so that the public authority develops a realistic project to the market. In the case of PSC, special attention will be given to the cost of risks. But this is an unusual position for governments and public authorities in general, because the retained risks are usually "self-insured" and not evaluated in commercial terms.

**Figure 11. Public Sector Comparator organizational chart**





## 4.8 Comparison between options based on net present value

### 4.8.1 PSC importance in the process

In preparing the PSC the sum of all costs, revenues and risks, as they will occur within the same timeframe compared with a conventional procurement, will be evaluated. According to the business case, PCS represents the upper limit of costs that cannot be exceeded by the best PPP bid within predefined quality standards. Virtually, for every phase of the business case is necessary to use the same definition of the project, describing objectives and conditions thereof. PSC should be prepared in an objective way, because if the call for tender is withdrawn or the price of PPP bids is higher than expected, it will play an important role. This is due to the fact that basic criteria should remain the same, if the decision is made to return to a conventional form of financing. PSC is dynamic. During the awarding process of the contract it shall be considered as good practice to adjust the cost and revenue components of PSC.

Where, in the preparation of contract documents, quality requirements for the construction or performance management need to be changed, they must also be changed in the PSC. Such adjustment shall also apply if the initial situation changes compared to the core terms of reference. This, for example, corresponds to the change in scope to the original project performance, project duration, interest rate and planned assumptions related to planned risk allocation.





Proposals from the private sector in terms of increased efficiency or cost reduction and optimization to innovation and related technical characteristics for construction and organization of conventional option award should not be transferred to PSC. Generally, PSC should represent at any stage of the business case, a realistic and accurate benchmark all possible options can be measured against. Bids of private investors should be evaluated and compared with each other and with the public procurement option in respect of economic advantages. When the best bid is compared against the PSC, all aspects shall be considered, whether they are quantitatively important to help the decision-making process, or qualitatively important, as they are directly related to the contract.

The final comparison between the total cost of conventional procurement and regular revenue of the PPP model, as a sum of all payments in cash and securities, will make it possible for the savings or possible efficiencies to be visible (if in general), which in its turn will justify the decision to apply a PPP or not.

In this case, it is necessary to take into account that the remaining costs assigned to the public partner (for example, costs of monitoring the contract) must be added to PPP bids.

#### 4.8.2 Calculation method and parameters

The use of dynamic processes to calculate investment in preparation for the PSC allows a proper comparison of various payment flows. The basis for this is the assessed values of all payment flows of conventional procurement options throughout the life of the project. The costs and revenues during the planning, construction and operation of the project phases are evaluated in time. In addition, different implementation options usually show a different profile of costs (operating costs, financing risks).

To enable a monetary comparison of cash flows in respect to their economic benefits and to measure the impact of the project on a long-term basis of 20 to 30 years, it is important to take into account for comparison the payment period of various payments.

#### Net present value (NPV)

NPV makes comparisons between cash flow evolved over the lifetime of a project (total and updated at baseline) and implicated investment effort (total, in present value) for its realization. It results that NPV is a full indicator of investment efficiency. NPV of a project is determined by subtracting the present value of the net revenue from the project operating the initial investment value, respectively, the net present value of payments required to be made for the operation of the project as shown by the formula:

$$VAN = \sum_{t=1}^n \frac{CF_t}{(1+k)^t} + \frac{VR}{(1+k)^n} - I_0$$

NPV indicates the actual value at moment 0, of project's implementation which shall generate in the future diverse flows of revenues and expenditures





$t=1$ ,  $n$  represents the analysis dimension (number of years);  $VR$  represents the residual value;  $k$  represents the present value,  $I_0$  represents the value of initial investment

Determining the value of a PPP project is challenging because there are different ways to measure the value of future cash flows. Because of the time value of money, 1 Lei earned in the future won't be worth as much as 1 earned today. The discount rate in the NPV formula is a way to account for this. In practical terms, it's a method of calculating a PPP stakeholder return on investment, or ROI, for a project.

Example: Let us say you, as a partner in PPP, can get 10% interest on your money.

So, 1.000 Lei now could earn 1.000 Lei  $\times$  10% = **100 Lei** in a year.

Your **1.000 Lei now** would become **1.100 Lei by next year**.

So **1.100 Lei next year** is the same as **1.000 Lei now**.

So 1.000 Lei now is the **same** as 1.100 Lei next year (at 10% interest).

- And **1.210 Lei in 2 years** is the same as **1.000 Lei now**.
- etc.

### Future Back going to Now

And to see what money in the future is worth now, one may go backwards (dividing by 1,10 each year instead of multiplying):

Example: A stakeholder in PPP promises you **500 Lei next year**; what is the Present Value?

To take a future payment backwards one year **divide by 1,10**

So, **500 Lei next year** is  $500 \text{ Lei} \div 1,10 = \mathbf{454,55 \text{ Lei now}}$  (to nearest cent).

The Present Value is **454,55 Lei**

Example: A stakeholder in PPP promises you **900 Lei in 3 years**; what is the Present Value?

To take a future payment backwards three years **divide by 1,10** three times

Example: A partner in PPP promises you **900 Lei in 3 years**; what is the Present Value?

To take a future payment backwards three years **divide by 1,10** three times

So, **900 Lei in 3 years** is:

$$900 \text{ Lei} \div 1,10 \div 1,10 \div 1,10$$

$$900 \text{ Lei} \div (1,10 \times 1,10 \times 1,10)$$

$$900 \text{ Lei} \div 1,331$$

**676,18 Lei now.**

### Still Better with Exponents

But instead of  $900 \text{ Lei} \div (1,10 \times 1,10 \times 1,10)$  it is better to use exponents (the exponent says **how many times** to use the number in a multiplication).

Example: (continued)

The Present Value of **900 Lei in 3 years** (in one go):

$$900 \text{ Lei} \div 1,10^3 = \mathbf{676,18 \text{ Lei now.}}$$

And we have in fact just used the **formula** for Present Value:

$$\mathbf{PV = FV / (1+r)^n}$$







- **PV** is Present Value
- **FV** is Future Value
- **r** is the interest rate (as a decimal, so 0,10, not 10%)
- **n** is the number of years

Example: (continued)

Use the formula to calculate Present Value of \$900 in 3 years:

$$PV = FV / (1+r)^n$$

$$PV = 900 \text{ Lei} / (1 + 0,10)^3 = 900 \text{ lei} / 1,103 = 676,18 \text{ Lei.}$$

### Net Present Value (NPV)

To be a **Net** Present Value one also need to subtract money that went out (the money one invested or spent):

- Add the Present Values received
- Subtract the Present Values you pay

Example: A stakeholder in PPP needs 500 Lei now, and will pay you back 570 Lei in a year. Is that a good investment when you can get 10% elsewhere?

Money Out: 500 Lei now

You invested 500 Lei now, so PV = **500,00 -Lei**

Money in: 570 Lei next year

$$PV = 570 \text{ Lei} / (1+0,10)^1 = 570 \text{ lei} / 1,10 = \mathbf{518,18 \text{ lei}}$$

The Net Amount is:

$$\text{Net Present Value} = 518,18 \text{ Lei} - 500,00 \text{ Lei} = \mathbf{18,18 \text{ Lei}}$$

So, at 10% interest, that investment is worth **18,18 Lei**

*(In other words it is **18,18 lei** better than a 10% investment, in today's money.)*

A Net Present Value (NPV) that is **positive is good** (and negative is bad).

But your choice of interest rate can change things!

Example: Same investment, but try it at 15%.

Money Out: 500Lei

You invested 500 Lei now, so PV = **-500,00Lei**

Money in: 570 Lei next year:

$$PV = 570 \text{ Lei} / (1+0,15)^1 = 570 \text{ Lei} / 1,15 = \mathbf{495,65 \text{ Lei (to nearest cent)}}$$

Work out the Net Amount:

$$\text{Net Present Value} = 495,65 \text{ Lei} - 500,00 \text{ Lei} = \mathbf{- 4,35\text{Lei}}$$

So, at 15% interest, that investment is worth **- 4,35Lei**

It is a bad investment. But only because you are demanding it earn 15% (maybe you can get 15% somewhere else at similar risk).

Side Note: the interest rate that makes the NPV **zero** (in the previous example it would be around 14%) is called the Internal Rate of Return.

Let us try a bigger example.







Example: Invest 2.000 Lei now, receive 3 yearly payments of 100 Lei each, plus 2.500 Lei in the 3rd year.  
Use 10% Interest Rate.

Let us work year by year (remembering to subtract what you pay out):

- Now:  $PV = - 2.000\text{lei}$
- Year 1:  $PV = 100 \text{ Lei} / 1,10 = 90,91\text{Lei}$
- Year 2:  $PV = 100 \text{ Lei} / 1,10^2 = 82,64 \text{ Lei}$
- Year 3:  $PV = 100 \text{ Lei} / 1,10^3 = 75,13 \text{ Lei}$
- Year 3 (final payment):  $PV = 2.500 \text{ Lei} / 1,10^3 = \text{Lei } 1.878,29$

Adding those up gets:  $NPV = - 2.000 \text{ Lei} + 90,91 \text{ Lei} + 82,64 \text{ Lei} + 75,13 \text{ Lei} + 1.878,29 \text{ Lei} = 126,97 \text{ Lei}$

Looks like a good investment.

And again, but an interest rate of 6%

Example: (continued) at a 6% Interest Rate.

- Now:  $PV = - 2.000 \text{ Lei}$
- Year 1:  $PV = 100 \text{ Lei} / 1.06 = 94,34 \text{ Lei}$
- Year 2:  $PV = \text{lei } 100 / 1.06^2 = 89,00 \text{ Lei}$
- Year 3:  $PV = \text{lei } 100 / 1.06^3 = \text{Lei } 83,96$
- Year 3 (final payment):  $PV = \text{lei } 2.500 / 1.06^3 = 2.099,05 \text{ Lei}$

Adding those up gets:  $NPV = - 2.000 \text{ Lei} + 94,34 \text{ Lei} + 89,00 \text{ Lei} + 83,96 \text{ Lei} + 2.099,05 \text{ Lei} = 366,35$

Lei

### Benchmarks and the reference point

To calculate different implementation options a common reference point should be used. The calculations must be performed in the same period of observation (design, build, operate). When there is a reference to the cost of the entire lifecycle of the asset, reference is made to the cost of ownership in relation to the economic life of the asset (not physical life forecasted). For example, the economic life of an asset as the reference point for the economic evaluation - perhaps 25 years - while the physical life could exceed 60 years. The cost of the asset includes the cost of its operation, for example works, utilities and services, and asset maintenance and renovation. The main side effect of NPV is the deductibility of interest rates, as added value to the investment.

### Selection of the discount interest rate

Discount interest rate (sometimes called simply "discount rate") describes the evaluation of the relative value of payment flows occurring at different points in time (revenues and expenses). It acts as a facilitator to ensure that the financial values are comparable between different options of implementation.

Ministries of Finance often set the discount interest rate to create a common system of evaluation. In the absence of central guidelines and instructions, as a simple alternative, it is possible to use an average interest rate taken from the wider economy. The same discount interest rate shall be used for all options; otherwise the whole exercise is undermined. Selection of the discount interest rate could have a strong impact on the business case.

### Taking into account price inflation





Given the long-term component of alternatives envisaged for implementation it is necessary to take into account anticipated price increases during the contract. Although this is only a critical opinion of the authors of economic evaluation, as long as the assumptions used are the same for all scenarios, the results would be comparable. Revenue and cost inflation assumptions should be stated explicitly. Impacts on the outcome of the business case of different assumptions regarding prices will be shown through sensitivity analyzes and scenarios.

#### **4.8.3 Composition and determination of PSC**

The basis for PSC is public procurement, which can become a means of comparison against anticipated bids from private companies within the PPP bidding process. During the preparation of the PSC all expected costs (and revenues) related to conventional procurement options must be evaluated. Including:

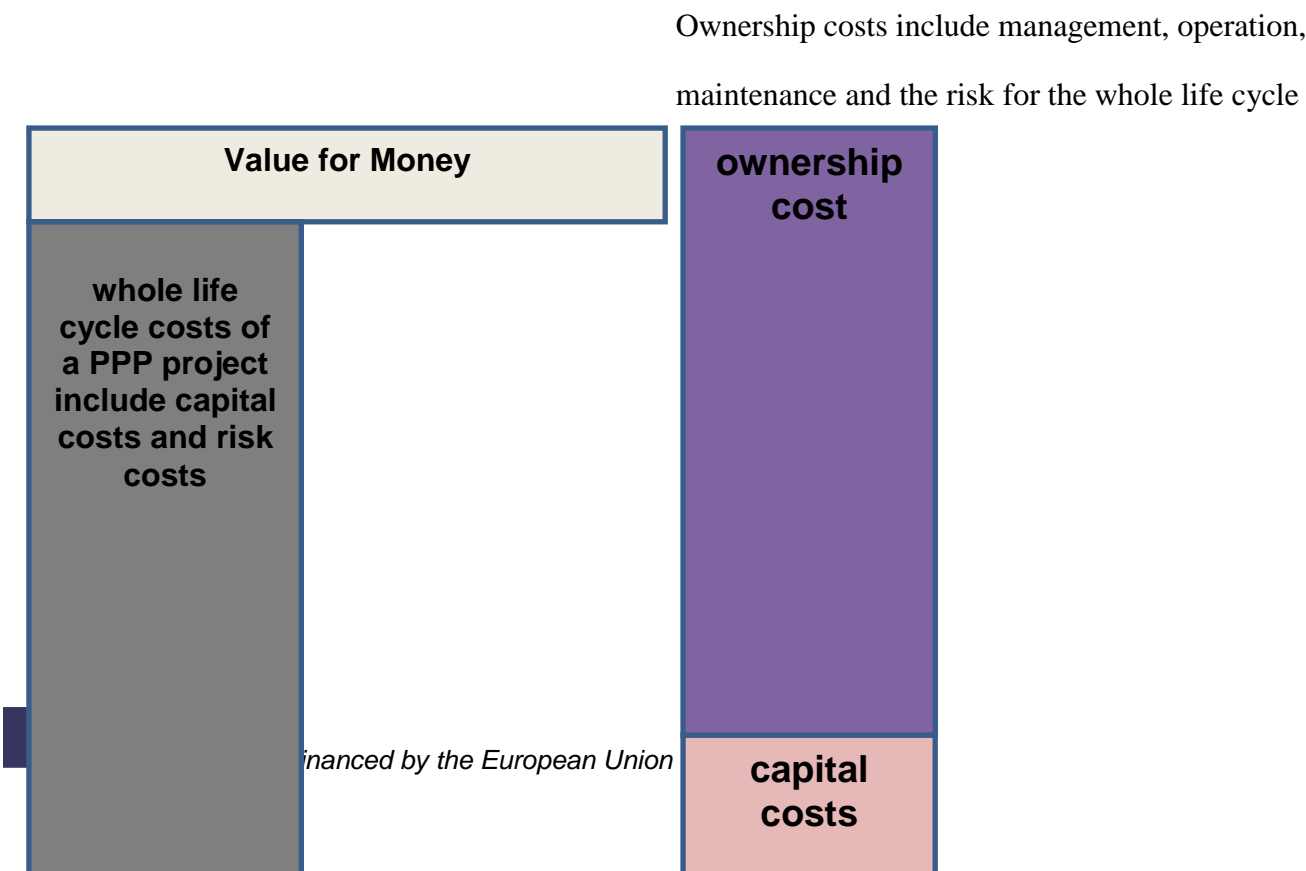
1. Investment and expenditure (design and build);
2. Cost of financing;
3. Operational costs (including maintenance);
4. Transactional and administrative costs (materials and personnel costs including charges for consultations);
5. Risk costs;
6. Proceeds from fees, user payments and any other income.

To quantify PSC related costs, the public partner must rely on empirical data provided by its own administration (usually national statistical offices) and the benchmarks of any other verifiable sources. Where data available is insufficient, more information can be collected, for example, by a comparable activity in other administrations. If no data is available, as a last resort, estimated values which should be as complete, accurate and reliable to the maximum extent, could be used. When estimates are used, their underlying assumptions should be clearly explained in the text. PSC quality depends entirely on the quality of inputs and assumptions. It is very important to refrain from any manipulation of PSC in order to reach a predetermined conclusion. Objectivity should underpin the process, but when subjectivity is needed, assumptions underlying the decision should be transparent. During PSC development all project-related costs should be considered for comparison. It is necessary to add to private sector bids all other expenses remaining for public sector services that were not transferred and the estimated costs of further monitoring. Below a graphical demonstration of expected profitability, comparing a PSC against the best PPP bid, is elaborated.





Figure 12. Demonstrating cost-benefit analysis





NPV of PPP bids

Conditional procurement

#### 4.9 Cost-benefit analysis

Cost Benefit Analysis (CBA) provides an assessment of non-financial benefits, costs and risks that cannot be normally expressed in monetary value, and the result of which is expressed by the formula:

#### SPECIFIC INDICATORS OF COST-BENEFIT ANALYSIS

**Net present value (NPV)** indicates the actual value, at moment 0, of project's implementation which will generate in the future diverse flows of revenues and expenditures

$$VAN = \sum_{t=1}^n \frac{CF_t}{(1+k)^t} + \frac{VR}{(1+k)^n} - I_0$$

Positive NPV → future revenues will exceed the expenditures. All annual differences: revenues-expenditures, „brought” into the present by use of present value, DCF (discounted cash flow)

NPV – difficult to use for projects with various life cycles or different inception-completion moments

**Internal Profitability Rate (IPR)** – present rate at which NPV = 0

(this is the minimal accepted internal profitability rate for the project, a lower rate indicating the fact that revenues will not cover the expenditures)

IPR – cannot be calculated for certain projects;

**Cost-benefit ratio (BCR)** compares the present value of future benefits with the present value of future costs.

BCR=NPV (I) /NPV (O); BCR>O – profitable project





Examples of CBA could include the environmental benefit or expected improvement in educational standards following rehabilitation of a school. For these situations the "weighted average cost of capital (WACC)" criterion to determine partial use for each criterion and total value of each option in implementing project objectives are used. Therefore, the criteria should be based on national goals and be tailored to the specific situation of the sector. Different options for implementation of a project are equivalent to different forms of realization of benefits and may involve different costs and different risks. As a result, CBA presents the advantage (or disadvantage) of each option, which would allow a comparison of different projects in an early stage by public procurement method in general compared with the realization of a project through a PPP scheme.

Provided the criteria are defined at an early stage - and if they have not already been taken into account in the monetary analysis - they may be included in the analysis of utilities to select the project<sup>20</sup>. This may include different criteria such as urban planning, ecology, culture of buildings and social-economic situations. No matter what criteria are used, as long, as they are transparent and remain the same for each option evaluated, no objection can be made. In addition, in order to get a decision which is transparent and traceable, defining the criteria and the value of each option is to be documented separately. Through documentation, the criteria may also be monitored more easily and experience in the project may be used for future projects. Utility analysis comprises the following steps:

1. Determination and weighting of evaluation criteria;
2. Evaluation of measures based on criteria;
3. Calculation of results.

For CBA, aside from qualitative criteria of utility analysis the results of the business case also must be taken into account, while the business case and cost/benefit analysis are using different calculation methods and it is not possible to combine the results, e.g. to summarize the percentage of advantages (or disadvantages) thereto.

In most countries, in the case of a positive outcome of a cost/benefit analysis – i.e. perceived benefits are higher than anticipated costs – does not necessarily mean that project's continuity is guaranteed. Since, as stated in the introduction, achieving public objectives through projects it is not so simple – in fact the possible positive outcome needs to be under surveillance throughout the entire lifetime of the evaluation process.

#### 4.10 Affordability

The capital provided by private companies and invested in public infrastructure is not free money. In the case of a concession, the project is financially independent and investments can be financed entirely by user charges from beneficiaries. Investors will expect to profit from the investment, and lenders will require assurances that they will get the money back.

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<sup>20</sup>All elements to be evaluated from the monetary perspective must be used in the business case. The use of elements in both calculation methods leads to erroneous results, as these elements are double weighted. It is important to note that quantitative criteria are part of CBA and can be balanced with monetary data. The utility analysis in contrast, includes qualitative criteria.





Accordingly, before a project is selected for approval and submitted for the award phase, it is important to assess whether those who will be responsible for paying the investments are capable to do so. With regard to a particular type of PPP project, the following issues should be addressed in this context:

**In the case of financially independent projects (where the user pays for a service)**

Implications	Comments
Proposed taxes/charges/fees are reasonable?	Such fees must meet the expectations of the Government and people
Are the taxes/charges/fees affordable for the market concerned?	It is important to know financial possibilities of users and end payers of the project, where some of whom may have less financial capacity than others; If the fees or charges are affordable for most potential users, but not for everyone, will it compromise the business plan?
Even if the proposed taxes/charges/fees seem reasonable, will the people accept paying them?	It may be the case that fees or charges seem affordable to all users concerned. However, this does not mean that they are ready to pay. They can avoid the service, deciding instead to rather spend their money in other ways; The best way to find answers to these questions is through social surveys;
Are there any other cheaper or free options for the users?	It may be the case that there are alternative options. It's common for toll roads when constructing a highway to reduce travel time. The old alternative old, slower one still exists and if the cost of using the new motorway is higher than the benefits perceived by potential users, then this will reduce the number of potential users and will therefore have a negative effect on the financial performance of the project.

In regard of joint ventures, the same issues must be considered as for the independent financial projects, and additionally:

**In relation to subsidized projects (users pay a subsidized price)**

Implications	Comments
It is anticipated that the public authority will still be available to allocate grants required during the contract?	Since such PPP projects are set jointly by public and private sector, most commonly, the private sector will provide the capital, while the revenue in full comes from a combination of taxes, tariffs for public and public subsidies from national or local budgets (or both). It is the cost of continually paying the difference between revenue from fees and taxes, and mandatory revenue of the business plan which should be of highest priority to the public authority. Such commitments may last the entire life of the PPP contract and, as such, require from public partner





	long-term contractual obligations. Responsible public authorities should coordinate with the Ministry of Finance before engaging in any future flow of payments for the benefit of a private company.
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It should be stressed that if there is a substantial element of public payment (for example, state aid), private investor's risk is reduced.

#### 4.11 Market assessment

To understand the competitive environment for the project, an assessment of the market is necessary in order to understand the interest and ability of the market which could provide assets, services and capital needed. To increase the marketability, the project needs to be structured taking into account the following specific market requirements:

- Size and volume of the project;
- Scope of services;
- Detailed operating plan;
- Competition.

Some tips on preparing for a Market Sounding.

1. Public partner may investigate whether a similar scheme exists for which interest levels are already known.
2. Public partner sets clear objectives for the exercise. What does he hope to achieve? What information does he want potential bidders to supply at this stage?
3. Prepare a list of organizations/potential bidders public partner may wish to contact. He should think broadly about the PPP project, and aim to contact as wide a range of potential private partners/bidders as possible.

For example, for an IT PPP scheme, he may consider:

- Hardware manufacturers
- Software companies
- Telecommunications companies
- Sector specific specialists etc.

4. Public partner may seek assistance for drawing up the contact list.
5. Public partner may see individual companies i.e. prospective bidders separately or collectively, but should make it clear that this is an informal discussion, with no commitment on either part (in the field of public procurement this institute is called technical dialogue) .

##### 4.11.1 Size and relevant volume of the project







The increase of expected efficiency must be higher than the specific costs of awarding PPP contracts (external consultancy costs, additional personnel and administrative costs) and private financing costs (banking fees, safeguards). In some cases, it may make sense to envisage bundling similar projects, to reach a higher volume. In other words, the complexity of PPP projects and related advisory costs means that only large projects are suitable for this model. For example, school projects normally consist of several projects because the financial value of a school is usually too low to justify the transaction costs.

#### **4.11.2 Scope of services**

The scope of services allocated to the private sector must be large enough and clearly defined with clear interfaces, though it varies according to each sector. Medical and clinical services tend to remain in the hands of the public sector in the case of a large hospital project. The private sector will build the hospital and will provide such services, as cleaning, catering, security, parking etc. In a penitentiary project, prison guards would normally be provided by the public sector, while the building and operational services such as cleaning, laundry, catering etc. will be provided by the private sector. In a school project, teachers will usually be provided by the public sector, the building and operational services such as cleaning and catering, being provided by the private sector. It is essential for public sector staff to understand the terms of the project, so as to enable cooperation between private and public sector in operating the project.

#### **4.11.3 Detailed operating plan**

Operating the project throughout the whole life cycle must be drawn up in detail and estimated in the financial model. Unforeseen costs must be incorporated mandatorily into the financial model required: maintenance and replacement of buildings and equipment. This can be quite simple in a school, where the equipment consists only of furniture, fine arts, sports and administrative items. It may however be more complex in the case of a university or hospital where technology plays an important role and there is a problem of continuously upgrading the technology, and risks allocated and evaluated.

#### **4.11.4 Competition**

Current rules on PPP in Moldova are set on basic principles such as impartiality, transparency, equality and non-discrimination (see Article 3 of Law No 179). These principles are designed to create a proper platform for bidders to compete without fear of corruption and encourage more bidders to participate in the tender procedure. In practice, the optimum market acceptance of a project will ensure a strong demand for the project. With plenty of competition between bidders, the better will be the tender results. This is the best way to get reasonable market prices and good quality solutions.

A preliminary competition could help at an early stage, to exclude tenderers that do not possess the relevant qualifications. This is the best way to protect personal and financial capabilities, both from the public sector and the private tenderers. During the tender process the level of detail relating to the bid will increase, while the number of bidders will decrease. This reduces costs for bidders, while increasing the level of services to be provided by the remaining bidders.





Detailed explanations provided to unsuccessful bidders help them better accept the final decision and have better performance in future bids. Information meetings with those bidders excluded also proved to be very constructive in the past.

## **Part V. Award procedures for a PPP contract; Contract and Monitoring**

The following overview highlights the award procedures addressing the relevant stages to be respected before signing the contract:

### ➤ **Transparency (Section 1):**

- Publication in the Official Gazette of RM of the advertisement on the opening of the competition for the selection of the private partner, valid for 60 days;
- Publication of an advertisement on the official website of PPA, as well as other national and international web pages.

### ➤ **Access to the award procedure (Section 2):**

- Any economic operator or individual has the right to submit the bid for participation in the competition.

### ➤ **Clarifications on bidding documentation (Section 3):**

- Any economic operator concerned has the right to request clarifications on how the competition is run and /or documents to be submitted.

### ➤ **Tender participation fee (Section 4):**

- The economic operator has to pay a fee to participate in the procedure for awarding the PPP.

### ➤ **Guarantee for the bid (Section 5):**

- Guarantee for the bid is provided by the bidder to protect the public partner from the risk of improper behavior by the tenderer for the entire duration of the contract award procedure. The guarantee shall not exceed 20% of the bid's amount.

### ➤ **Bank guarantee on due performance of the contract (Section 6):**

- The bank guarantee shall be furnished by the private partner in order to ensure the public partner of quantitative and qualitative performance throughout the period of the contract;
- The amount of bank guarantee shall not exceed 25% of the investment.

### ➤ **Submission of bids (Section 7):**

- The bid is binding in terms of content throughout its life and must be signed by the bidder.

### ➤ **Opening bids (Section 8):**

- The Commission is obliged to open the bids within 5 days from the deadline indicated in the advertisement;
- The opening session of bids ends with minutes (name of bidders, modifications and withdrawals of bids, the fulfillment of the requirements of the guarantee of the bid, etc.)





➤ **Evaluation of bids (Section 9):**

- Selection Commission shall examine the bid in financial and technical terms;
- The technical proposal must meet the minimum criteria of the specification;
- The financial proposal must be within the minimum estimated value of the specification;
- The winning bid is determined solely from admitted bids and only based on the criteria listed in the standard documentation;
- After completing the evaluation of the bids, the Commission shall prepare the bid evaluation report and the minutes on the final decision designating the successful bidder or rejection of bids.

➤ **Appointing the winner (Section 10):**

- The public partner is obliged to inform all tenderers in writing on the bidding results not later than 3 working days from the drawing up of minutes by the Selection Commission;
- Selection Commission publishes in the Official Gazette of Moldova a statement about the results of the selection process.

➤ **Cancellation of the selection process of the private partner (Section 11):**

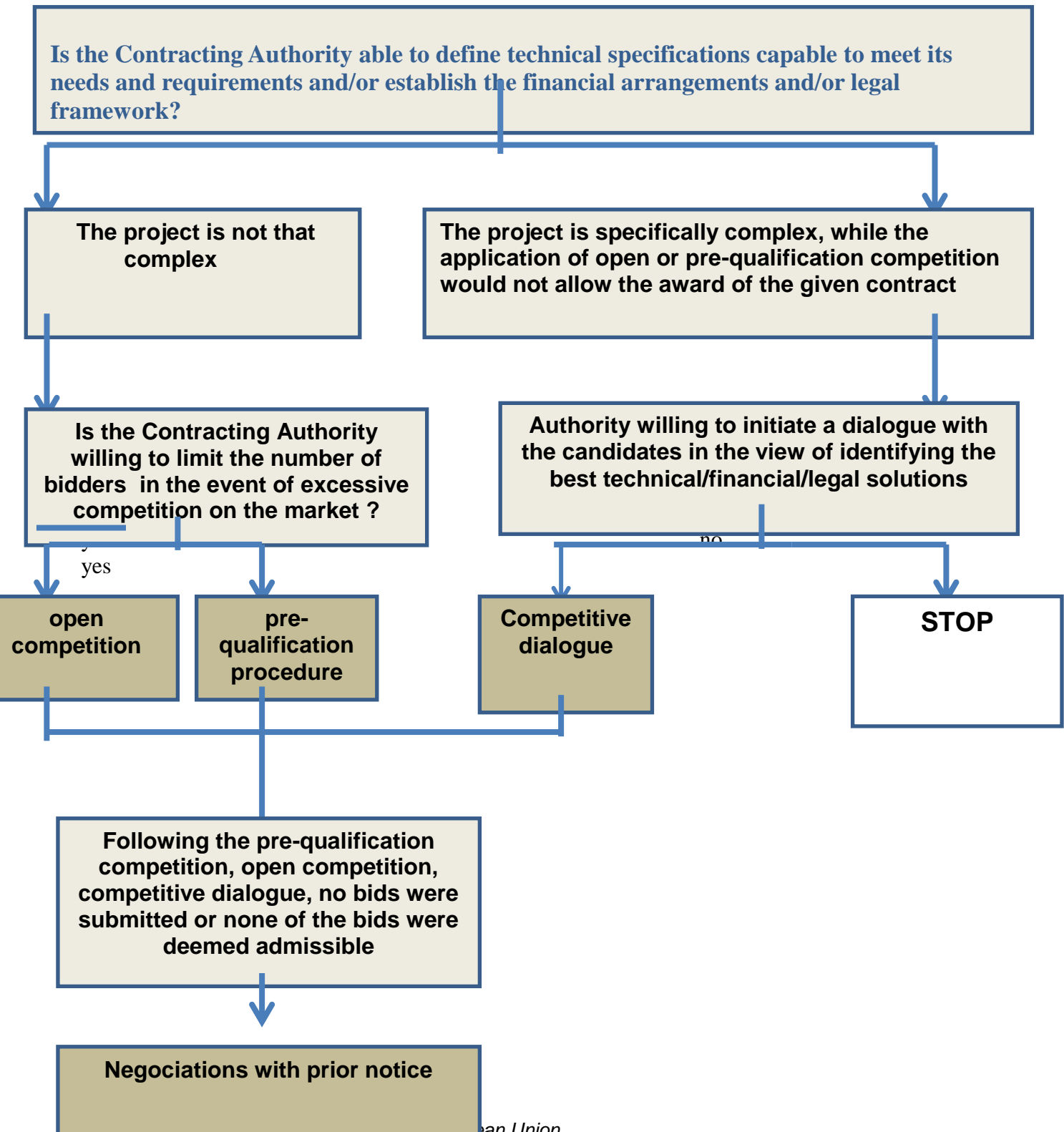
- On own initiative public partner may cancel the selection process for the following reasons:
  1. Lack of competition;
  2. Only rejected bids were submitted;
  3. Breach of legislation was found.

At any stage, the Commission may adopt the decision to cancel the selection process. The public partner has the obligation to inform about the cancellation within 3 days from the date of adoption of the decision.





Figure 21. Chart for the selection process of the most relevant award procedure





Competitive procedure processes are seen as best to achieve good results and to be in accordance with the principles of fair competition. There are three main procedures suitable for PPPs, which are equally available to Moldova. Depending on the complexity, amount and other related PPP project elements, the public partner chooses one of the award procedures described according to the explanations below.

## 5.1 Single step private partner selection

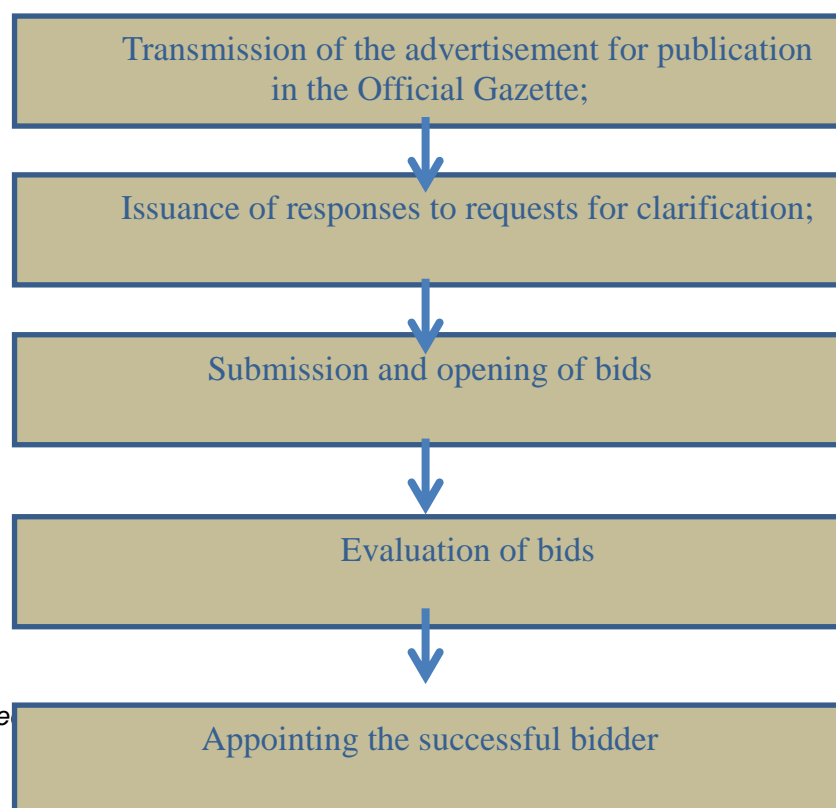
**Definition:** Open competition is the procedure for awarding public procurement contract to which any interested economic operator is entitled to submit a bid and is usually conducted in a single stage.

**Steps:**

1. Transmission of the advertisement for publication in the Official Gazette and on the website of the Public Property Agency;
2. Issuance of responses to requests for clarification;
3. Evaluation of bids submitted;
4. Appointment of the successful bidder;
5. Signing a contract with the successful bidder.

The competition for selecting the private partner by applying the “single step” bidding procedure is usually used when the project is of reduced complexity and public partner can determine the legal structure/project outline.

**Figure 22. Main stages of the competition for one-step selection of the private partner**





Concluding the contract with the winning bidder

## 5.2 Pre-qualification procedure

**Definition:** Prequalification is the procedure in which any economic operator is entitled to apply for participation in the selection process, but only selected candidates can submit bids. The public partner will choose to use private partner selection with prequalification if the project is complex and public partner wants to establish criteria for prequalification and subsequent awarding of the PPP.

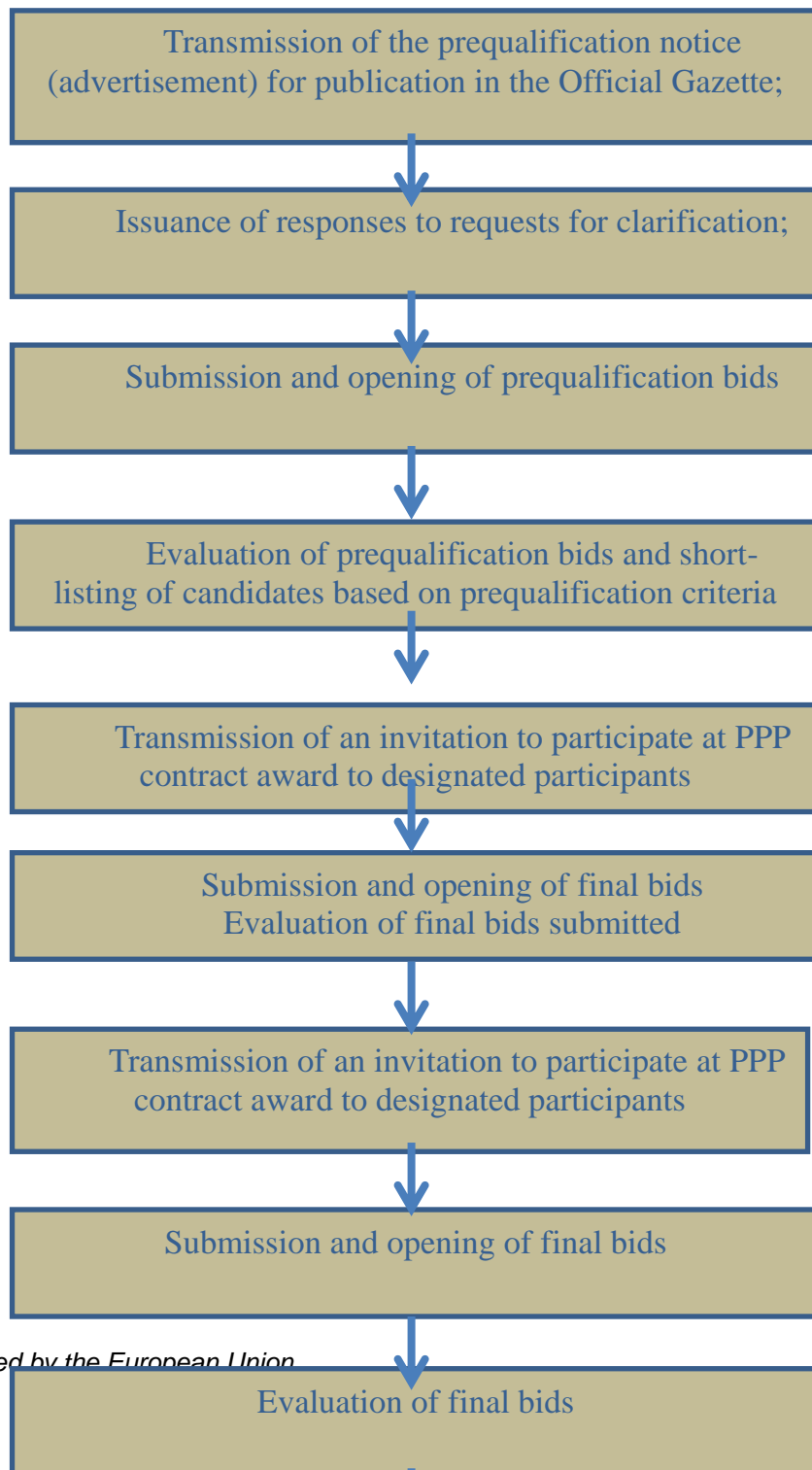
Prequalification procedure takes place in **two steps**:

- a) stage for the selection of participants with prequalification, applying pre-qualification criteria;
- b) the evaluation stage of selected prequalification bids submitted by applying the award criteria.

Prequalification phase entails prioritizing and qualifying economic operators based on pre-qualification criteria set out in the prequalification documentation in order to limit the number of participants that will submit a tender in the second stage of the prequalification procedure. Prequalification procedures are initiated by sending for publication an advertisement of call for tender with prequalification inviting economic operators interested to submit bids for prequalification and participation in the selection procedure. The advertisement is valid for 60 days after publication in the Official Gazette of the Republic of Moldova. Public partner is required to ensure publication of the advertisement about the prequalification procedure in the Official Gazette of the Republic of Moldova, in accordance with the form and content established in standard documentation for prequalification.

**Figure 23: MAIN STAGES OF PREQUALIFICATION PROCEDURE**









Concluding the contract with the winning bidder

### 5.3 Competitive dialogue

**Definition:** a procedure, where any economic operator is entitled to apply for and whereby the contracting authority conducts a dialogue with the candidates admitted, in order to identify one or more solutions capable of meeting its requirements. Based on the identified solution selected candidates are to develop the final bid.

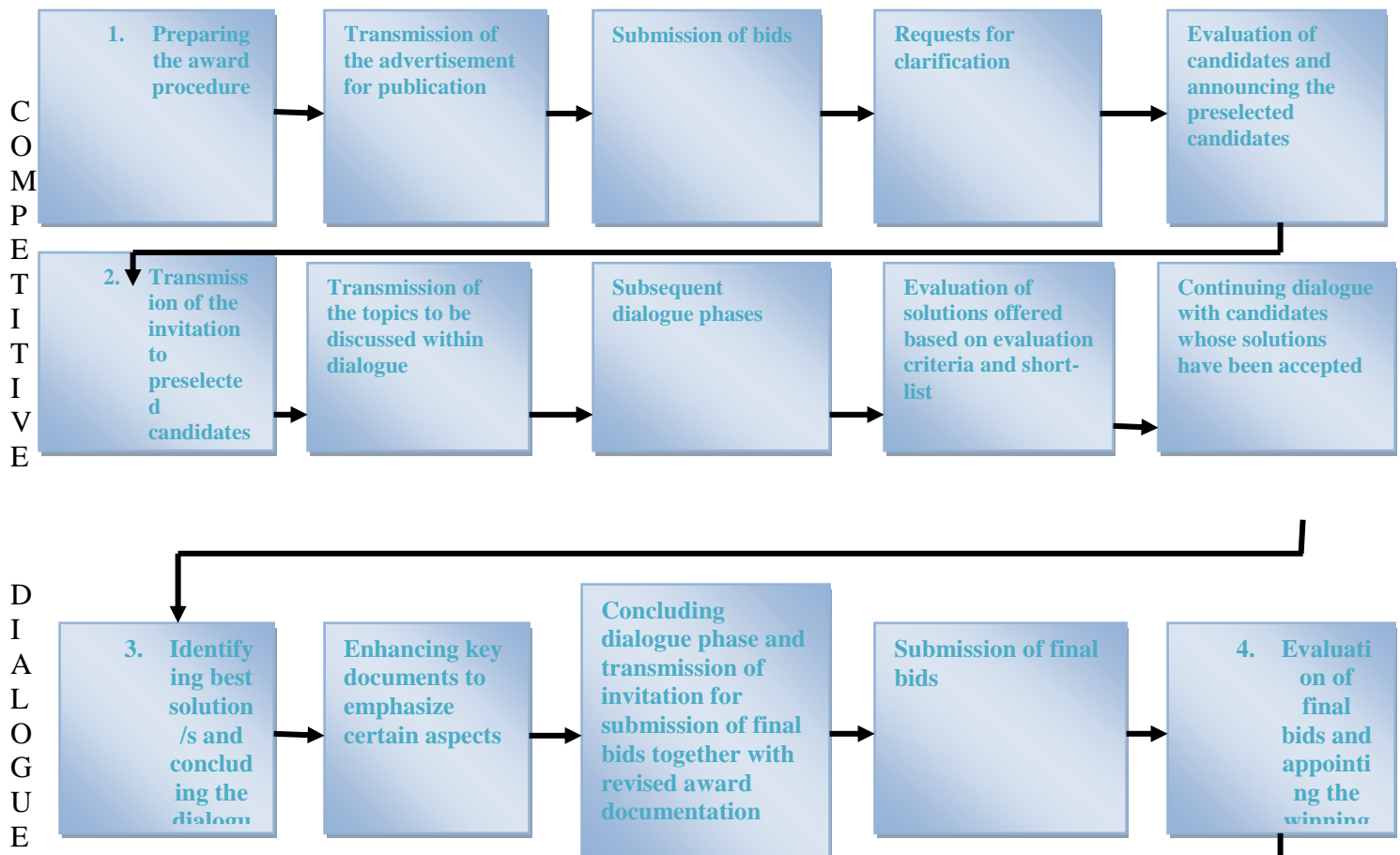
**Steps:**

1. Pre-selection of candidates;
2. Dialogue with the candidates admitted after the pre-selection to identify a solution, based on which final bids would be submitted
3. Evaluation of submitted final bids.





**Figure 24: MAIN PHASES OF THE COMPETITIVE DIALOGUE**





Fine tuning,  
approvals,  
signing the  
contract

The public partner should apply the competitive dialogue procedure for awarding a PPP contract, where a PPP project is considered to be particularly complex and prequalification procedure would not lead to the award of the PPP contract. A PPP project is considered particularly complex, when the public partner is unable to define proper technical specifications, to meet the requirements and demands. Moreover, it is also difficult to determine the volume of investments and/or the legal framework for the project's implementation.

The public partner has the right to apply the procedure for awarding the PPP also, in the case no bid was submitted for bidding or pre-qualification procedure or none of the bids were considered admissible.

Competitive dialogue is initiated by sending for publication the advertisement to initiate the competitive dialogue procedure, requesting interested economic operators to submit bids. The public partner is required to publish the advertisement for participation in the competitive dialogue in the Official Gazette of the Republic of Moldova and on the website of the Public Property Agency. This step is designed primarily to attract investors from potential private partners. To participate in the selection process, the bidder shall submit to the Selection Commission a bid. Bids shall be submitted to the Commission in Romanian, in a sealed envelope, to the address indicated in the advertisement.

#### 5.4 Similarities and differences of the award procedures

In the two latter procedures it is preliminary selection, often known as pre-qualification. This procedure is adopted in order to identify a manageable number of bidders, i.e. 3 or 4, which can prove technical competence and financial capability against certain thresholds, published by the competent public authority and which are appropriate and relevant to the project in question.

Competitive dialogue is applied when a public authority responsible is unable to specify the exact conditions for private sector participation in the tender procedure for a project and must explore options and ideas with the candidates shortlisted, in a formal process of competition.

The public authority responsible is discussing all open aspects of the project with all bidders in separate confidential meetings, known as dialogue meetings. The public authority responsible may adapt its specifications based on ideas and innovation proposed by bidders. When the public authority has developed its own ideas and revised its specifications, it will declare the close of dialogue and, shortly thereafter, issue a formal call for tender for the tenderers. Bidders will then resort to regular submission of bids. Practical experience in EU countries has lately shown that the competitive dialogue procedure is both time-consuming and costly for the public authority and the bidders, so the need to ensure confidentiality and equal treatment can be a binding constraint.





## 5.5 Single bid award procedure

### a) Lack of competitors

In the case of lack of competitors, an indication may be given to the extent that the project is not attractive to the private sector due to structural weaknesses and/or related to how the project was conceived and prepared. It can also be an indicator of future problems on return, as it is unlikely that a single bidder can offer the best price, when he knows that there is no competition. In such situations, the public authority may wish to consider whether it still makes sense to continue with the project in its current form or whether it would be more cost effective to reformulate the project or even to abandon the idea of implementing it through a PPP and adopt instead, a strategy based on budget financing.

### b) Unsolicited proposals

In the case of unsolicited proposals, the public authorities are approached directly by a company from the private sector, with a specific idea for the construction of infrastructure or service delivery, while using its own resources. While these ideas are always welcome, they should generally not be negotiated directly without competition. If this is done, the government remains open to criticism and creates the perspective of a project that was implemented without comparative studies or evaluation of the fact that the price paid represents good value for the country. United Nations Commission on International Trade Law has published guidance on this topic. However, there may be circumstances in which a bidder has the exclusive rights, crucial to the project, such as a patent, in this case, competition is not possible.

## 5.6 Negotiating and concluding a PPP contract

The procedure for selecting the private partner is based on the principle of free competition between potential investors. The Private Partner Selection Commission evaluates the bids submitted and admitted to the bidding process, assessing their appropriateness to conditions and criteria set out in the advertisement. Evaluation of private partner candidates is strictly in accordance with a precise set of measurable criteria established and approved by the public partner and stated in the advertisement.

The Selection Commission is entitled to reject the bids of some or all tenderers, if they have not submitted all necessary documents, if they were not drafted as stipulated, or in case their bids do not meet the bidding conditions. If no bidder is accepted for selection, it is declared void, and if there was selected or admitted only a single bidder, the Commission is entitled to cancel the selection procedure.

To conclude the contract with the private partner that submitted the most advantageous bid in economic terms, the private partner Selection Commission evaluates bids according to the following criteria: quality, price, technical value, volume, structure and terms of the investment commitments, aesthetic and functional characteristics, environmental characteristics, running costs, profitability, technical support services and time of execution





After considering all bids received, the Selection Commission draws an assessment report on bids received and decides on the selection of the private partner or the rejection of all bids<sup>21</sup>. The participant who proposed the best investment commitments and obligations, primarily capital related, pursuant to selection conditions, is appointed as the winner. The cheapest is not always the best method for choosing a partner. Most valuable bid is the critical element in a long-term partnership relationship and is the core of a successful project. Candidate's experience in the field covered by the project is the best way to choose the partner.

After appointing the best bid, the Selection Commission shall develop, within 30 days from the date of that decision, a draft of a PPP contract and submit it to the winning bidder. PPP must be based on a balance between obligations and benefits of the public and the private partner. The draft PPP contract should include mandatory clauses under the technical specification and its deadline for signing is 30 days after its submission to the winning bidder. A template contract is attached to this Manual in Annex III.

## 5.7 Monitoring PPP contracts

A successful PPP depends largely on the capacity of the government/public partner to keep the PPP contract on track. This entails setting clear requirements of the PPP partnership, monitoring the performance of all parties to the contract, reporting on results, and enforcing contract provisions that are not met. Different entities are available to support, or to take on full responsibility for monitoring the progress against the targets specified in a contract.

Article 32 of the Law no. 179 of 10.07.2008 stipulates that for purposes of providing the record keeping of public property, works and services underpinning PPPs, copies of contracts concluded with private partners shall be sent to the Agency for inclusion in the register of public assets, as established by the Government. The law also stipulates that the Register shall include data on the object of contract and its period of performance, terms for investments and payment of fees, environmental liabilities and other information related to realization of the PPP.

As the main sources of information for keeping the Register are the reports on public property based on which are set up PPPs, developed by public authorities, in accordance with Annex 12 to the Regulation on public property register, submitted to Public Property Agency once a year, by 15 April.

Providers of data necessary for inclusion in the register are central and local government authorities within which PPP contracts are concluded, which by law are responsible for the correctness and authenticity of the data provided. Central and local public administration authorities shall monitor and control the implementation of PPPs and submit to the Agency once a year, by April 15, information on the implementation of PPP contracts, terms and results of use thereto, according to situation as of January 1<sup>st</sup> of each year.

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<sup>21</sup> Unsuccessful bids and the attached documents are kept for 3 years in the archives of the public partner, and then destroyed. The participants whose bids were rejected are entitled to appeal within 15 days after publication in the Official Gazette of the Republic of Moldova the Commission's decision on the appointment of the private partner. Complaints submitted by participants whose bids were rejected are examined within 30 days from the submission by the Commission which decides on the appeal and informs the applicant upon the decision taken. The commission's decision to reject the appeal or not inform the applicant of the result thereof does not deprive the applicant of his/her right to appeal to an administrative court.





The Agency may request from the competent authorities, necessary information on the progress, results, shortcomings and obstacles to efficient implementation of PPPs. Based on information presented, the Agency submits to the Government annual reports and publishes statistical analyzes on PPPs.

**Law no. 179 of 10.07.2008 provides in Article 22** that the public partner annually checks on how PPPs are implemented, including by means of appointing an independent auditor. The private partner is obliged to provide free access to the public partner to the PPP object and to provide all information and documents related to PPP realization. The PPP may be subject to other forms of control (environmental, quality of construction, etc.) as required by law.

No less important is the fact that Article 15 (2) of the Law on PPP establishes that within the remit of the mayor or chairman of the district council, if necessary, is the responsibility for signing PPP contracts and sending to the Agency copies thereof for registration. Moreover, it is expressly prescribed their monitoring and control function to ensure proper implementation of PPP projects within the administrative-territorial unit jurisdiction. It is well established that local partnerships are subject to local monitoring and control. However, the evidence thereof needs to be provided centrally by the Agency through the Register of public assets. The legislation also provides that breaches of contractual clauses and any other violations identified by inspection shall be removed immediately or within the period agreed by written agreement between the public partner and the private partner.

Control over realization of PPP may be also exercised by public control/audit bodies in line with the legislation. The private partner is responsible for fulfilling the obligations undertaken under the PPP. If the PPP is based on the construction and reconstruction of infrastructure and /or objects that provide public utility services, the private partner is responsible for the quality of construction or reconstruction of PPP's object, including compliance to the requirements set forth in project documentation, technical specifications and regulations. If neither party does comply with its obligations or in the case of its inability to fulfill those obligations, the other party is entitled to ask for termination of the contract, subject to a notice period of at least 3 months.

Parties are liable for unilateral modification of the conditions of the PPP contract performance. If, by changing the conditions for realization of a PPP one partner had been inflicted damages, the guilty party will be required to repair such damage. Also, it must be noted that the private partner is obliged to provide, upon request, information on implementation of the PPP, as well as its tasks and powers, rights and obligations of consumers and customers, with the exception of official information with limited accessibility, personal information and information constituting a state or commercial secret. In this respect, the law prohibits the public partner to disclose confidential information about the private partner. The type and character of such information shall be determined by the parties.

## V. ABBREVIATIONS AND GLOSSARY





## Glossary

**Public Property Agency** through its **PPP Unit**, clearly has a key role in the implementation of PPP projects in Moldova. As an implementing agency, which is under the Ministry of Economy, PPA is the first point of contact for both public and private partners in all aspects of PPP and offers a range of consultative assistance to other public administration authorities involved in the identification and management of PPP projects.

**The suitability analysis** is a part of the **cost-benefit analysis** covering qualitative criteria of a project that cannot be expressed in a monetary system.

**The profitability analysis** shows the project in general (e.g. range of construction works, project duration, etc.) and different options for its implementation. The feasibility study should be considered a dynamic document that needs to be regularly updated as soon new information or more accurate data become available. A pre-feasibility study for the project is the foundation for a profitability analysis.

**The public contracting authority** is the authority signing the PPP contract and therefore responsible for implementing the project.

**Cost-Benefit Analysis (CBA)** provides an assessment of non-financial benefits, costs and risks that cannot be normally expressed in monetary value. Examples of this analysis may include environmental benefits or improvement of educational standards, following the rehabilitation of a school. For these situations are used "weighted criteria" to determine partial use for each criterion and the total amount of use of each option for the implementation of project's objectives.

Provided that the criteria are defined at an early stage – and in the case they have not already been taken into account in monetary evaluation - they may be included in the suitability analysis for the selection of the project<sup>22</sup>.

### Concession

Law nr.534 of 13.07.1995 no. 534 in the art. 1, paragraph 1 defines concession as "a contract under which the State or territorial administrative units assign to (transfer) an investor (natural or legal person, including foreign one) in return for a fee, the right to conduct prospecting, exploration, exploitation or restoration of natural resources in the Republic of Moldova, provide public services to operate movable and immovable property, which is public property or of administrative-territorial units, under the law, are wholly or partially removed from the civil circuit, and the right to conduct certain types of activity, including those representing state monopoly, taking over management of the concession object, the presumptive risk and financial liability".

**Confidentiality** means keeping secret the information about the private partner by the Selection Commission, Project team and other persons involved in the procedure for awarding a PPP contract under law.

### Build-operate-renovate (refurbish)

A PPP, where the private partner assumes the financing of construction of the PPP object and all of its maintenance costs over a maximum period of 50 years. The private partner is allowed, in accordance with the law, to collect charges for the use of public property within the specified period. At the end of the contract,

<sup>22</sup>It is important to underline that quantitative criteria are part of CBA and can be balanced with monetary data. In contrast, the suitability analysis included quality criteria.







PPP object shall be transferred free of charge to the public partner, in good condition, functional and free of any charge or liabilities.

### **Build-Operate-Transfer**

A PPP, where the private partner assumes the construction, financing, operation and maintenance of a public asset. The investor is allowed to levy user charges to recover its investment, cover maintenance costs and obtain a reasonable profit. Upon expiry of the contract, the public asset is transferred free of charge to the public authority in good condition and free of any charge or liabilities.

### **Build-Operate-Transfer**

A PPP, where the private partner assumes the construction of immovable property that is transmitted immediately after the completion of construction to the public partner and the public partner, in its turn, transfers it to the private partner.

**Advertisement** is an official document issued by the public partner, in order to begin the procedure for the award of a PPP contract in accordance with the provisions of these legal regulations on PPP contracts.

**Advertisement on the initiation of the pre-qualification tender (procedure)** is an official document issued by the public partner, in order to initiate the pre-qualification tender in line with the provisions and regulations set in Chapter V of GD/476 of 04.07.2012

**Advertisement on the initiation of competitive dialogue** is an official document issued by the public partner to initiate the competitive dialogue procedure within the selection procedure of the private partner in line with the provisions and regulations under Chapter VI of GD/476 of 04.07.2012.

**Equity** is made available to a company for an unlimited period and serves as a guarantee against the risks assumed by the company thereto. The equity of a company compensates losses for debt. Equity takes over the function of entrepreneurial project risks. Therefore, to ensure better control by having a number of rights concerning the operation and control of the company and the right to information.

**Mezzanine capital** is a mixture of financing between loan capital and cash flow. Compared with equity, mezzanine capital confers fewer decision-making rights to the company, but also involves less risk. Compared with senior debt mezzanine capital is regarded similarly as pure equity, because it is subordinated to it. This means that it will be served after the senior debt, but before capital providers. In certain circumstances, mezzanine capital has an advantage, as it enhances social capital as an equity substitute, which means more guarantees and more lending options for a company.

### **National Council for PPPs (the Council)**

The Council is an advisory authority responsible for setting priorities and strategies for implementation and monitoring of PPPs. The Council plays an important role in coordinating national interest PPPs, evaluating their effectiveness and making proposals on amendments of legal framework, helping to create favorable conditions for investment. Whenever necessary, the Council has the right to suggest the creation of special working groups and appoint experts responsible for preparing reports on specific issues.

### **Private Partner Selection Commission**

Private Partner Selection Commission is established by decision of the public partner, out of an odd number of at least 5 people, including 4 experts with complementary expertise (an economist, a legal expert,





PPA representative and a specialist within the field of the project). Its main role is to lead the award from the beginning until the end of the selection procedure. In this scope, the Commission receives applications for participation in the tender, assists the candidates with documentation and guidance, establishes award criteria, receives and examines bids and finally, appoints the bidder that submitted the best bid for the project.

### **Pre-qualification for private partner selection competition**

Pre-qualification for private partner selection competition is organized in the case of a complex project and when the public partner is willing to set initial pre-qualification criteria and subsequently, criteria for the award of the PPP contract.

In line with p. 145 of the Regulation on standard procedures and general requirements for selection of the private partner, the prequalification competition procedure is carried out in two stages:

- a) stage for selection of participants to pre-qualification by use of pre-qualification criteria:
- b) stage for evaluation of bids submitted by selected candidates, by use of award criteria

The prequalification competition is initiated by sending for publication an advertisement for prequalification competition, inviting interested economic operators to submit prequalification bids for participation in the competition. The advertisement is valid for 60 days after its publication in the Official Gazette of the Republic of Moldova.

The second stage implies submission of final bids and cost evaluation.

**Senior debt** is supplied to a company for a limited period and subject to specific contractual credit terms. The contract determines the period, the interest rate, the step-in rights and the right to access information. Capital providers require also specific guarantees from the capital recipient in order to reduce credit risks. This includes either the provision of equity or an agreement with third parties, such as, for example, guarantees, and contractual step-in rights.

**Private partner selection competition** is a one-step procedure under which the Commission selects the private partner in line with the requirements and conditions set in the advertisement.

**Output specifications** is the written documentation detailing the conditions of the competition, technical conditions for goods services/works, which meet the needs of the public partner in relation to the contract to be awarded and standard documentation regarding the contents of the bid.

**Pre-qualification criteria** are criteria established in prequalification documentation based on which the qualifications and ranking of bidders is performed in accordance with their technical, financial and organizational capacities.

**Public Sector Comparator (PSC)** represents the reference value by which can be measured the economic advantage (or disadvantage) of each option. The final comparison between the most economically advantageous bid and PSC. A premise for ensuring comparability of options is to use the same performance and quality standards, the same project duration and the same approach for risk allocation. In order for PSC to have any effect or value in the process, the same cost items should be compared at a time when the cost is incurred. The same elements must be compared also in the case of PSC, with particular attention paid to the costing of risks.





**Competitive dialogue** is the procedure for private partner selection, which applies, when a public authority responsible is unable to specify exactly how it wants the private sector to participate in the award procedure for a project and must explore options and ideas with the short-listed candidates within a formal competition process (tender procedure).

**PPP Unit** - PPP implementing unit within PPA

**Standard documentation** - documentation that includes all information relating to the object of public-private partnership contract and its award procedure, instructions to bidders, including the output specification which details the technical conditions for goods/services/works which meet the needs of the public partner in relation to the object of public-private partnership contract to be concluded.

**Final standard documentation** is the final documentation produced as a result of dialogue with bidders admitted, containing all information relating to PPP contract, consisting of output specification and standard contractual clauses set out in the dialogue process, underpinning the submission of final bids.

**PPP file** is a set of PPP project related documents starting with the inception phase and over the whole course of project's implementation

**Project team** –the working group set up by the public partner in order to ensure project's realization.

### **Risk assessment**

It must be emphasized that each PPP project involves several risks, even when a project is solely intended to build an asset. Therefore, risk identification is not just a matter of PPP schemes, but also a secure calculation throughout the entire lifecycle, risk allocation and negotiations with potential private partners during the award process. For all PPP projects, all project-related risks must be identified and evaluated to reach a decision on the best allocation of risks.

Risks are allocated to the candidate who is in the best position to manage and influence them the private partner will charge a price (usually known as "risk premium") to allocated risks and will consider them in the bid.

### **Project finance**

Project Finance is a financing structure relating to contract design and risks in accordance with the interests of the parties involved and choosing the optimal mix of equity and borrowed capital or mezzanine capital for a particular project. There are different types of funding that can be used to structure the financing for project needs (e.g. priority loans, capital bridges, reserve accounts).

This methodology involves the sale (without recourse) of existing or future individual debts by the private partner whose services are paid at the beginning of the operational phase at the financing bank. Financing conditions for the public partner can only be achieved if the public authority responsible waives, to the benefit of financing bank, of any rights and compensation to payment deriving from the main contract.

### **Factoring without recourse (regress)**





In many countries the majority of projects are implemented using project finance, in Germany and France, highly developed countries with higher investment rating and low interest rates on sovereign debt, especially in the case of small projects (up to 20 million euro) is used the so-called **"Factoring without recourse" method (Germany)** or **"Daily assignment" method(France)**.

The factoring contract is a contract between one party (supplier of goods or services) and another party, the factoring company (assignee – a bank or specialized financial institution) whereby the supplier gives the assignee claims arising from sales contracts of goods concluded between the supplier and its customers. By factoring, the supplier transfers to the factoring ownership claims derived from commercial invoices.

Factoring without regress – the factoring company assumes the risk of invoice default, trying to recover the amounts from the debtor or the insurance company. The factoring does not tilt towards the supplier to recover the invoice, having no recourse to it.

**Primary market investors** are those who participate in project initiation and are, therefore, interested in the prospect of higher returns for higher risks involved at the initiation of projects. When developed projects become operationally mature, the project's primary investors typically seek to sell their investments to raise funds for initiation of new projects. They sell their equity to the so-called secondary market investors.

**Secondary capital market investors** in Europe are typically private equity, real estate and infrastructure funds, as well as insurance companies and pension funds. PPP projects are deemed special by the investors because the cash flows are at least partly secured by a partner with top securities, i.e. the public sector. The investors demand a reasonable return on their investment to reflect the risks undertaken therewith. The result is that capital providers require a bigger profit than creditors who benefit from the contractual right to repayment.

### **Lease-develop-operate**

A PPP, where private partner obtains in temporary use or temporary possession and use a public asset, being obliged to pay its price in installments over a period not exceeding 50 years. If the contract does not provide otherwise, the public partner acquires the right to obtain revenues from the services delivered by the private partner, and at the end of the contract, the public asset is transferred to the public authority in good condition and free of any charge or obligations;

**Ministry of Finance** is responsible for examining proposals involving the state budget<sup>23</sup> for realization of already approved PPP projects and is involved in monitoring the expenditure of funds related to PPPs by public partners in Moldova.

**Risk matrix** - is an indicative risk-sharing model under public-private partnership projects, aiming to assess predictable risk categories which may impact the project, describing their distribution algorithm, based on the ability of each participant in public-private partnership to manage the risk in the most effective manner, so that the long-term cost of the project is based on the lowest possible cost-benefit analysis.

### **Risk management**

In line with best international practices risk management is based on four principles of PPP projects:

1. Each identified risk must be accepted by the party that is in the best position to manage the risk.

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<sup>23</sup> State budget participation may occur not only within project finance, where the payments whether partly or in full are allocated from the state budget. State budget may also be affected in the case of occurrence of risks which are allocated to the public partner or in the case of contract's termination by public partner's fault etc.





2. For those risks that neither party can effectively manage, insurance will be typically used, to cover the risk (conventionally procured projects are often self-insured by the state).

3. Transferring unrealistic risks to the private sector creates the risk per se.

4 For those risks that cannot be handled by the private sector a premium will be charged for their management.

Some risks in a PPP project can be easily identified as generic risks, while some may be specific to the nature of the project itself. Similarly, certain risks in a PPP project can be easily and logically allocated, for example, the construction risk is borne by the construction company according to its specific activity, while the public partner is not directly involved in construction activities.

**Bid** - legal act by which the economic operator is willing to formally engage in a public-private partnership contract.

**Pre-qualification bid** - document by which a participant to pre-qualification demonstrates his personal situation: the ability to perform professional activity, economic and financial situation, technical and professional capacity, in order to get an invitation for the subsequent submission of the bid.

**Economic operator** – natural/legal person or an association of natural/legal persons associated in line with legal provisions.

**Financial proposal** - tender document that includes information on prices, tariffs and other financial and commercial conditions in place, to fulfill the requirements of the advertisement

**The object of public-private partnership** is property owned by the state or territorial administrative units, including the Autonomous Territorial Unit of Gagauzia, public activities and services of national and local interest that are proposed for public-private partnership.

**Preliminary bid** - the document by which the economic operator offers (general) preliminary solutions meeting the needs and constraints of the contracting authority, as put forward by the standard prequalification documentation and as a result of conducting the competitive dialogue procedure.

**Technical proposal** – bid's document containing details for carrying out the PPP, based on the requirements of the output specifications or, where appropriate, descriptive documentation established by the public partner.

**Objectives of PPPs** are general and specific tasks to be realized within PPP.

**Award procedure** represents steps to follow by the public partner and bidders, so as the agreement of parties on the involvement in the PPP contract becomes valid.

### **Design-Build-Operate**

A PPP, where the construction and operation of the public-private partnership object is transferred to the private partner for a period up to 49 years. A PPP project may be financed entirely by the private partner. Upon the expiry of the contract with the public partner the object of PPP is transferred free of charge to the public partner in good, functional condition and free of any charge or obligation.

### **Financially independent projects**

These are projects that have sufficiently robust financial revenues to support in full all design, construction, maintenance and operation costs of the asset during the contract lifetime, as well as financing





costs. This means that asset users and the public partner pay its full economic cost. This payment is usually collected as a tariff or price of a ticket. Examples of financially independent projects are bridges and tunnels, some airports and seaports or sports stadiums. Sometimes additional revenue support for the project can be made available from commercial sponsorship agreements and by including other external commercial income. The most important is that you do not need state capital and recurrent budget support for the project. For this reason, financially independent projects are usually considered to be the most desired form of PPP.

**Participant to pre-qualification** – any economic operator who has submitted a bid for the first stage of the prequalification procedure or competitive dialogue

**Private partner** is the economic operator who has signed the PPP contract

**Public partner** is a legal person of public law or an association of such entities establishing a PPP relationship.

**Privatization** is an activity that includes the transmission of public property to private property under the legislation in force.

**PPP** - according to art. 2 of the Law no.179 of 10.07.2008, public-private partnerships are long-term contracts concluded between the public partner and the private partner for activities of public interest, based on the capabilities of each partner to distribute resources, risks and benefits;

#### **Public service projects – fully subsidized projects**

Public service projects are fully financed by the public partner projects and are characterized by the fact that the state is the only payer even if there are many users and beneficiaries of services provided through the project. This is also the main difference compared to financially independent projects and subsidized projects which usually have many customers who pay charges. In many countries, basic public services are provided free at the point of use; costs of providing these services are paid from the budget - be it the State budget or a special fund. A good example of this type of project is a project of renovation and refurbishment of school because neither staff, nor pupils are actually paying for using this type of infrastructure and therefore it is only the relevant administrative body of the relevant public authority, which must bear the costs.

**Main responsible person** for a major project (and PPPs are often major projects) should be the highest official from the competent public authority, typically the head of the public authority appointed in the capacity of the private partner.

#### **One-step procedure**

Chapter IV of the **Regulation on standard procedures and general requirements for the selection of the private partner** contains provisions on the private partner selection one-step procedure whereas the project is of reduced complexity and the public partner can determine project's technical/legal outline. (p.44)

#### **Subsidized projects**

In many cases, full economic costs of establishing and operating infrastructure assets are significantly greater than the ability of users to pay in full. Even if they can afford to pay the price, people might not be







willing to pay. For example, if there is a bridge with an expensive toll, drivers may prefer to take a longer route to find a cheaper alternative tariff.

For such projects social objectives usually have a greater focus on purely economic and financial objectives. A good example of this would be an urban tram system, which normally would have the following main purposes: to improve the movement of people from the suburbs to the center and thus, improving labor availability and mobility, to persuade more people not to use their own transport to travel, thus creating environmental benefits and making space for urban parking places to be used more productively in economic terms.

**Private partner single bid selection procedure** – a procedure when contracting may be made with a single bidder

### **Unsolicited proposals**

In this specific case public authorities are approached directly by a private company with a specific idea for building and infrastructure or provision of services by use of own resources.

**Net Present Value** (sometimes put simply as, “Present Value”) describes the evaluation of the relative value of payment flows occurring in different intervals of time (revenues and expenditures). This acts as a facilitator to ensure that these financial values are comparable among various implementation options.

Therefore, all payment flows in each period of project’s duration are updated to the relevant interest rate at a common reference date (e.g. inception date of the project). NPV is most typically prescribed by the Ministry of Finance.

### **PPP Inter-Ministerial network**

In 2013, the Government of the Republic of Moldova created the PPP Inter-Ministerial Network (the Network). The Network is not a legal entity and represents an advisory board which consists of 49 representatives of central public authorities and is responsible for coordinating PPP related activities among central public administration and PPP Unit within PPA. One of the main objectives of the Network is to coordinate the initiation of PPP projects identifying the objectives and conditions for PPP implementation and ensuring transfer of knowledge and best practices relating to PPP. Coordination of Network’s sittings and proposing nominations of its members is within PPP Unit’s remit.

### **Rehabilitate-operate-transfer**

a PPP, where the public asset is transferred to the private partner, who is obliged to rehabilitate, operate and maintain it for a period not exceeding 49 years. Upon contract’s expiry, the public asset is transferred, free of charge to the public partner in good condition, functional and free of any charges or obligations.

### **Value for money**

When a decision is taken to investigate a method of PPP project implementation one might expect that the PPP option will be more efficient than conventional financing, having better quality and lower costs (value for money). If this is the case, these benefits must come from:

1. An overall cost optimization through implementation of a cost approach over life cycle.
2. An ideal distribution of risks between the private and public sector.
3. Optimizing possibilities for incentive structures for private partner efficiencies.







4. Transfer of knowledge from the private partner's experience in a comparable project in the country and abroad.

It is also expected that a project run through PPP contributes to the construction or maintenance of public infrastructure which enables the responsible public authority to focus on providing essential public services as its core business. Experience also shows that PPP project experience can also contribute to optimization of projects which are conducted in a traditional manner, through better training and understanding of risk-sharing.

PPP is just one of the implementation options available for the public sector. The selection of the implementation option should be supported by a business case. This economic analysis should mark a parallel between conventional and alternative options, while remaining neutral and open to all possibilities. Value for money ratio can be assessed only on a case by case basis.

**The pre-feasibility study** is developed one stage prior the feasibility study. The object of analysis is generally the same in both stages, in a pre-feasibility study the project outline may not be completed, using preferably existing data and is designed largely with approximations.

**The feasibility study** is an analysis of the viability of a public-private partnership project, which includes the main features of the object of public-private partnership, based on a technical, economic and financial analysis of planned investment. Therefore, the feasibility study is the basis for the decision to participate or not at the award of a PPP project. Regular updating of the feasibility study during the award process is ultimately the basis for the decision to award a project. The feasibility study is based on a pre-feasibility study or something similar, which creates the initial analysis of a project's profitability.

**Donors** usually support the completion of the project by providing operational services (e.g. Planning, construction, facility management, etc.). Their objective is to achieve a reasonable profit participating in the project, while limiting their responsibility by creating a project entity (SPV) as a company.

### **Benchmarks and reference points**

To calculate various options for implementation a common reference point should be used. The calculations must be performed in the same period of observation (i.e. the whole lifetime of the project, its stages, usually relevant, planning, construction and operation).

### **Net Present Value (NPV)**

A dynamic process most commonly used for net present value (NPV). In this method payments and/or revenues occurring at different times are comparable by removing the effects of inflation, by upgrading to a predefined moment in time and using a present value that is most commonly prescribed by ministries of finance. The result is the cash value of the expected payments expressed in financial terms of today. But cash flows (tangible terms or payments) made at predetermined dates must also be compared as they affect costs.

**Days** are calendar days, except when deemed as working days.





## VI. ANNEXES

### Annex I: Project risk distribution preliminary matrix, approved by the Order of the Ministry of Economy no. 143 of 2 August, 2013.

**Project risk distribution preliminary matrix**

No	Risk category	Risk	Risk description	Risk consequence	Risk mitigation	Risk allocation		
						Public partner	Shared risk	Private partner
<b>Location risk</b> - all the events that occur in public and private partnership projects related to ownership / lease of the areas required for implementing the project, location, and location provisions for a public and private partnership object that can lead to failure to implement it or complete the work in terms set out in the initial cost estimate.								
1.	<b>Location risk</b>	Availability of location	Facing difficulties of access to a particular location	Generates delays in stages of project implementation and further increases in project expenses	The public partner’s obligation at any stage of development of a public and private partnership project to provide bidders’ access to the location of the public and private partnership project	√		
2.		Unforeseeable location and soil conditions	Temporary suspension of land use for practicing activities provided in the project because of discovering archaeological	Increasing the amount of time and costs of the project due to danger of interruption or cancellation of the project	The public partner shall ensure through geological researches that the site selected for the project allows its implementation		√	





			remains and / or national heritage, natural resources, or groundwater		and is not contrary to the public interest of exploiting natural resources. However, at the design stage, the private partner will verify the geological expertise and ensure that it allows for implementing the project. If any unforeseen complicated conditions that cannot be mitigated are discovered at the location selected for implementing a public-private partnership project, it shall be changed.			
3.		Approving the documentation required	Delays in the process of obtaining approvals / permits required in the terms provided, or those that can be obtained under unpredictable conditions	Delays at the stages of project implementation and further increases in project expenses	Organizing an efficient framework for cooperation between both partners in the process of obtaining the necessary documentation on project development, keeping to the terms provided in the contract		√	
4.		Title of ownership (claims)	Difficulties in the acquisition of land from the	Extending the term for the project	The private partner shall be obliged to strictly		√	





			owners and / or obtaining the right to use lands	implementation and increased costs related to the project	check the documents of origin (land registers) to eliminate all doubtful issues			
<b>Design and construction risk</b> - all the events within the framework of public-private partnership projects that result from faulty design and construction and /or engineering errors impacting project costs, starting from the stage of design, construction until the operational phase								
5.	<b>Design and construction risk</b>	Design drawbacks	The possibility that the design does not comply to quality specifications due to the design company's lack of experience	Delays in the beginning of the project on the date stipulated and additional expenses; project failure probability exists	In the projects where design is delegated to the private partner, the latter shall be responsible for the quality of the project and in charge of selecting the design company under the provisions stipulated in the specification and described in the feasibility study			√
6.		Discovering archaeological remains	Discovering archaeological remains and /or national heritage on the site which hinders construction works, causing delays and increasing project expenses	Increased cost and time of project implementation.	Maximum attention shall be paid to the underground geological investigation phase. Subsequently, if they are found at the construction phase, the private partner shall immediately inform the public partner who shall examine and estimate the remains. The risk shall be managed	√		





					by the public partner.			
7.		Unsuitability of the land for the construction planned	The risk of an event during construction which is likely to render its completion impossible in time and within estimated costs	Delays in putting construction into operation, failing to keep to specific standards, and technical deficiencies. This risk may generate other risks, such as financial, trade, and location risks.	The private partner shall visit the location and ask the public partner details on the location and environment at the development phase of technical and financial development of the offer. The private partner shall develop a draft technical and economic analysis and forecasts regarding the construction and its location.			√
8.		Cost overruns	Completing the construction turns out to be more expensive than stipulated before.	Costs and additional time is needed to complete the project.	The private partner shall perform construction works without deviating from the standards set in the contract, planning consistent resources necessary for the construction.			√
9.		Faulty works	Defects discovered in construction work including those caused by insufficiently qualified staff	Costs and additional time required for putting the construction into operation.	The private partner shall train qualified personnel at every phase of project implementation providing construction quality according			√





					to technical requirements and technical design.			
10.		Technical depreciation	A risk that the technical solutions proposed do not comply with the technology to ensure project implementation.	Increase in project expenses due to the urgent need for refurbishment and acquisition of new technical equipment	The private partner shall anticipate such situations and ensure that the necessary equipment should meet the technological process requirements of the project			√
11.		Supply of utilities	Utility construction undertaken by the public partner can be late; therefore, the services cannot be rendered on the date scheduled.	Costs and additional time is needed to complete the project.	The private partner shall take all actions necessary to complete the project before the deadline.			√
12.		Delayed works	Occurrence of events during construction, including unfavorable weather conditions, leading to the impossibility of completing the works within the terms and costs estimated.	Delays in project implementation and increased costs	The private partner shall require extending the term for the execution of the work or any part of it, through consultation, the parties shall determine any extension of time, when the private partner has the right to change the duration without modifying the terms of the contract.			√

**Financing risk** - all the events in public-private partnership projects which have an impact on the capital invested





or loaned by the private partner for the project

13.	<b>Financing risk</b>	Insolvency and other risks related to the lender	The private partner becomes insolvent or its services require more funding than projected	Failing to provide the services requested from the private partner	Ensuring implementation of the commitments of the private partner through bank guarantees and performance bonds. In case the total investment is unfinished, the private partner shall lose the amounts already invested.			√
14.		Unavailability of financing	The private partner is not able to provide financial resources and the capital within the amounts and terms scheduled	Stopping the project due to lack of funding for project continuation or completion of the investment	The public partner shall carefully analyze the financial commitment of the private partner and availability of the investment amount required for the project			√
15.		Increasing initial investment costs	The initial investment due to changes in legislation, policy or other issues gets larger than estimated by the private partner, and the private partner cannot provide investment as additional funding is required	Increased project costs or stopping the project	The private partner shall guarantee the completion of the initial investment by the bank guarantee performance. Besides, the public partner may cover a part of the necessary investment by grants.		√	
16.		Variation of the interest rate, inflation,	Financial fluctuations influencing	Increase/decrease in profit derived	The private partner shall ensure financial			√







		or exchange rate	parameters in time and expected costs for the project	from the project development implemented by the private partner	stability of the project through various financial tactics, suggesting appropriate mechanisms to compensate for losses through price adjustments, therefore, avoiding such overcompensation or double payment for the project			
17.		Changes in taxes and fees	A risk that, throughout the project, the general taxation regime may change in an unfavorable way for the private partner	Affects the profitability of the project, the ability to refinance and the conditions determined with the donors	Incomes obtained by the private partner shall be sufficient to cover tax and fee differences, though these charges shall not exceed the rate established in the public-private partnership contract. The remaining taxes shall be completed from grants or other sources constituted and / or attracted by the public partner as provided by the contract.			√
<b>Operating risk</b> - all the events in the public-private partnership projects that occur from direct or indirect losses and result in the wrong organization of processes, internal control procedure inefficiency, technological disturbances, unauthorized activities of staff, or external influence								
18.	<b>Operating risk</b>	Utility supply	Unavailability of utilities necessary for the project (e.g.	Increases in cost and time, in some cases, negative impact	The private and/ or the public partner shall ensure utilities			√





			electric power, gas, or water).	on the quality of the services provided pursuant to the contract.	necessary for operation of the object of the contract in accordance with the needs and availability required.			
19.		Obsolete or inadequate technical solutions	Technical solutions applied are not technologically appropriate for ensuring the implementation of the project.	The private partner's income falls below the financial closing limit for the project which results in losses. The public partner is not obtaining the services requested. This risk causes the occurrence of other risks.	The public partner shall specify the technical quality standards in the specifications, avoid deflecting from them, and such compliance shall be under close monitoring.			√
20.		Management and operating inability resulting in cost overruns	The private partner cannot fulfill its obligations under the contract, which results in higher operating costs than anticipated.	Works and services under the contract are not provided in time and quality, resulting in additional costs and time required to complete the project.	The investor shall monitor the progress of implementation of the project through internal audit and employing qualified experienced staff.			√
21.		Hidden defect risk	Quality design and /or work is /are inadequate, which results in increased maintenance and repair costs	Cost increases and negative impact on the quality of services provided in the project required additional time to eliminate the defects.	The public partner shall further monitor the progress of activities and project development.			√
22.		Maintenance	A risk that	Additional	The private			√





		and repair	maintenance costs will increase in relation to those projected.	maintenance costs for the public-private partnership object	partner shall provide direct maintenance and repair services for the object of the contract.			
23.		Insurance	Insurable risks may become uninsurable during the project, or a substantial increase in the rates for calculating insurance premiums may occur.	Delays in project implementation and increased costs.	The private partner shall calculate and forecast insurance costs, whereas the public partner shall present detailed information about the insurance company, underlying conditions, and criteria to ensure the project.			√
<b>Commercial risk</b> - all the events in public-private partnership projects impacting the financial liquidity of the debtor for payment at the point of its maturity.								
24.	<b>Commercial risk</b>	Changing economic conditions	The risk of unexpected fundamental changes in general economic conditions, which may have its impact on costs and income in public-private partnership projects.	Income in the previous financial projections	The private partner may propose conditions to ensure contractual conditions hedging in its offer.			√
25.		Increasing competition	Risk of eventual competitors in the services offered.	Anticipated decrease in the revenue due to price depreciation for similar products offered by competitors.	The private partner shall analyze anticipated market conditions, and make a tender offer correlated to			√





					the market situation in the relevant field.			
26.		Decrease in the level of market demand	Risk of unexpected fundamental changes in general economic conditions, which may result in a reduced demand for the services contracted.	Revenue in previous financial projections	The private partner shall try to improve the situation by applying financial measures.			√
<b>Political/legislative risk</b> – all the events in public-private partnership projects generated by any legislative changes and /or those related to the policy of the public partner								
27.	<b>Political/legislative risk</b>	Amending the legislation in the relevant field	Risk of legislative modifications and the authority policy that cannot be anticipated when signing the contract and addressed directly and exclusively to the specific project, which leads to additional operational or capital costs for the private partner.	Impact on project profitability and premature completion of the contract.	The public partner shall ensure continuity of development policies in public-private partnership projects, including tax policies related to public infrastructure.	√		
28.		Withdrawal of complementary support	Changes in strategy, tactics, and current actions of policy makers the enterprise has direct and	Impact on project profitability and premature completion of the contract.	The public partner shall contribute to the smooth development of the project within its contractual	√		





			indirect contracts with in their own country (at national, regional, and local levels).		limits.			
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**Environmental risk** – all the events in the public -private partnership projects which have an environmental impact and result in increased project costs due to eliminating measures and their significant reduction.

29.	<b>Environmental risk</b>	Properties adjacent to the project are unavailable.	Emergence of real estate or other type of object adjacent to the public-private partnership object that does not allow the development of the project due to environmental contamination.	Emergence of decontamination costs which results in increasing the cost of the project in terms of environmental conditions.	Depending on the nature and cost of decontamination, the public partner may assume a part of the risk generated by the properties at the disposal of the project, controlling the supervision of environmental pollution.	√		
30.		Emission standards.	Possibility of liability for losses caused by environmental damage resulting from improper construction or operating activities.	Additional costs, environmental decontamination.	The private partner shall be obliged to take all necessary steps to avoid such events. It shall employ experts to investigate and establish measures to minimize costs and avoid delays at the stages of project implementation.			√

**Force majeure risk** – all unforeseeable events in public-private partnership projects caused by natural calamities: earthquake, landslide, fire, drought, strong wind, heavy rain, flood, frost, blizzard, etc., or social circumstances: revolution, belligerent state, blockade, strike, statewide prohibition of import or export, epidemic.

31.	<b>Force majeure risk</b>	Force majeure circumstances	Inability to develop the public-private partnership	Complete destruction of assets or damage to assets related	The private partner shall take measures to ensure the assets		√	
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			project due to force majeure circumstances.	to the public-private partnership project. Loss or damage to the public-private partnership project assets or service (failure to provide services), losing the possibility to obtain profit or their delay.	and /or fulfill the repair or replacement in the shortest time possible. The private partner shall be exempt from the consequences related to the service; if the consequences are unquantifiable, the private partner may establish funding reserves , the private partner must urgently identify an alternative to the provision of services, in case the consequences are insured.			
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## Annex II: Contractual forms for implementing a PPP

### Contractor/service agreements

Contractor and service agreements are contractual arrangements to implement a PPP. The main difference between these contracts resides in the purpose of the parties and the object of partnership. Thus, the object of the contractor agreement is, as a rule, the works and the material result of the works carried out as a whole (repairs, constructions, etc.), whereas the object of the service contract is, as a rule, a non-material result (different types of services: medical, care, consulting, educational, etc.).

In line with article 946 of the Civil Code, under a contractor agreement, a party (entrepreneur) is obliged to carry out certain works bearing its own risk for the other party (client), and the latter is liable to receive the work and pay the agreed price. The object of a contractor agreement can be the production or transformation of an asset, as well as the reception of other results of the works carried out.

In line with article 970 of the Civil Code, under a service contract, a party (provider) is obliged to provide to the other party (beneficiary) certain services, and the latter is liable to pay the agreed remuneration. The object of the service contract can be services of any type; the range of these is very large and unlimited. The services provided to the beneficiary shall be well-established. The object of the services provided is, as a rule, a non-material result but may be represent also a material result: dental services, clothing, footwear





repair etc. A common object of service contract as a PPP may be: supply of equipment, raw materials, power, labor force, food supply, cleaning, care, preservation and storage, security and safety, transportation, etc.

The parties of a service contract are the beneficiary and the provider. Both natural persons and legal entities may be parties of such contracts. The service contract is an onerous one, and the amount of payment for services is established upon an agreement or by legislation and is paid after the completion of services, unless otherwise stipulated by the parties.

The model of a so-called „design and construction” partnership is implemented under a contractor/service agreement, which represents a simplified form of the PPP and a traditional model of public procurement of works and services. Within this model, the entrepreneur is selected based on competition and the basic criterion for selection is the price offered. In line with the general rule, the entrepreneur shall bear the risks related to construction design and building. The investment amount may vary depending on the duration and volume of investment.

Unlike the above-mentioned classical model of PPP, the Law no.179 as of 10.07.2008, stipulates the following activities which form the object of contractor/service agreements:

- a communal household;
- paid-for capital renovation works;
- maintenance of infrastructure items and public assets;
- keeping record of resource consumption;
- delivery of bills to consumers

It can be noticed that unlike the classical, generally accepted model, the object of this contract does not include the basic activities of the respective model: design and construction. In practice, this may lead to uncertainties regarding the admissibility to include design and construction works into the object of the PPP, if it is implemented under a contractor/service agreement. However, the activities expressly provided for in the law, represent only some priority fields (activities) of a **PPP**, which are to be carried out under a contractor/service agreement, at the same time, not denying other activities which could be included into the object of the respective contract.

### **Fiduciary management contract**

The fiduciary management contract, besides other contracts, is mentioned as another form of PPP implementation. In this regard, the Law on PPP stipulates that the implementation of a PPP under fiduciary management contracts has as an object the insurance of proper public property management based on the performance criteria established in the contract. This being carried out by transferring the managerial risk and the risks related to the functioning of the PPP object by the public partner to the private one.

More often, the owner of an asset or the person authorized by the owner have no time, qualification or competence to manage the property. That is why it is reasonable to resort to establishing a fiduciary administration, because this allows the owner to get results not being involved in the management process of his/her asset.

The fiduciary management contract represents a legal act, relatively new for the national legislation, being mainly defined and regulated by the Civil Code. Analyzing the provisions of the Civil Code and the specialized literature, the following general particularities characterizing the fiduciary management contract can be distinguished:

- the fiduciary management of assets is a form of carrying out the owner’s mandates, especially related to ownership and utilization of a good or a property complex (enterprise), therefore, the transmission of the asset under fiduciary management does not lead to the transmission of ownership to the fiduciary manager;







- the main purpose of fiduciary management is to have specific assets or property complexes maintained accordingly by individuals (economic operators), professionals, to ensure effective and beneficial economic management of a certain asset.
- the fiduciary manager exercises the rights of the owner in his own name within certain limits and only in the interest of the grantor (owner). In fact, the fiduciary manager can provide at the same time a set of factual and legal services, the number and the volume may vary: representation, maintenance, storage, transportation, supply, etc.
- under fiduciary management, public authorities can act only as grantors, but not as fiduciary managers. Thus fiduciary managers can be only natural persons and legal entities of private law.
- a fiduciary manager may not be at the same time a beneficiary due to the fact that according to the essence of this contract, he acts in the interests of the owner or persons indicated by the owner, who are the beneficiaries of the contract. The manager can only claim certain payment for his services and reimbursement of expenses, if provided for in the contract.
- The following may serve as objects of a management contract: a comprehensive property complex (public service, company), a certain part of this or certain separate movable and immovable assets (except consumables) both existing and future ones.
- The assets under fiduciary management have to be separated from other goods of the granter as well as from the ones belonging to the fiduciary manager. In this sense, a separate balance sheet shall be kept and/or a separate bank account shall be open.
- The fiduciary manager receives no remuneration for his/her activity if not agreed otherwise by the parties or stipulated otherwise in the law. If stipulated so, the remuneration may be expressed either as percentage of the income (profit) obtained from the fiduciary managements of assets, or as a fix amount of money, or as procurement of a part of the assets managed by the fiduciary in line with the fiduciary management contract.

### **Rental/lease contracts**

Although the rental and lease contracts are similar in their essence and purpose, however the current Moldovan legal framework makes a clear distinction between these types of contracts. In particular, the distinction refers to the object, form, rights and obligations of the parties, the applicable law and other aspects.

The lease contract is concluded for a definite or indefinite period of time and is an onerous contract under which the main obligation of the lessee is to pay for the rent, which is established by the mutual agreement of the parties. When establishing the rent amount, the following circumstances should be taken into consideration: its term, object, and composition, its wear, the intensity of usage of the good, etc. The rent can be established and/or paid in cash, in kind or otherwise as agreed by the parties. It should be noted that when the object of lease is a state property asset, there are regulatory acts and regulations which impose special conditions, and namely the Government Decision no. 483 as of 29.03.2008.

The particularity and the basic feature of the lease contract, which distinguishes it from the rental contract is that the object of the contract may be only land and agricultural commodities and that the purpose of transmission of these goods is – for temporary exploitation. The exploitation involves assuming under the contract all operations related to possession, use, processing, improvement and other aspects which are necessary to obtain a benefit, which is the ultimate purpose of the contract.

An important and defining peculiarity of this form of PPP is the condition that the private partner should, as a rule, be at the same time responsible for managing the transferred assets, using them according to their purpose, maintaining the infrastructure and collecting the payment for the work carried out. It is namely





in the light of these responsibilities, which basically makes it possible to distinguish a PPP contract from a civil contract.

Instead, the operator pays a certain amount (rent) to the contracting public authority (the lessor), which can be in the form of fixed fees paid periodically or as a share of revenues from asset management and/or the transferred service. The contract price shall be determined by the parties and cannot be less than the minimum amount of rent set in the annual state budget law.

### **Concession contract**

Concession is one of the main contractual forms by which a PPP can be implemented.

From the beginning it should be mentioned that in line with the Law no. 179 as of 10.07.2008, the implementation of PPP through a concession contract shall be carried out in line with the legislation on concessions. In this sense, the Law no 534/13.07.95 on concessions represents a special legal act in this field which regulates the subjects, objects, main rights and obligations, mandatory contract clauses, the form and mechanism of public assets, works and services.

The main purpose of the concession contract is to provide, based on optimal management, the performance of activities at an adequate level, at prices affordable for end users as well as the maintenance and development of any goods to be returned to the issuer of concession at the end of the concession agreement which have been entrusted to the concessionaire to carry out those activities. The object of the concession contract may be the property publicly owned by the state, district, town or village as well as public services;

The concession contract includes two distinct parts: the regulatory part of the contract, which includes the clauses stipulated in the technical specifications and the contractual part which includes the clauses that have been mutually negotiated by the parties;

Under the concession, the operating rights of an asset or service are temporarily transferred to the statutory undertaker. At the same time, the contracting authority typically retains ownership of the leased object or the result of activities given into concession and /or the right to provide public services. Through this the concession contract differs from other forms of partnership.

Under this form of partnership, the private sector representatives get the right: to build and/or operate (exploit) as a whole or in part, the result of works or to provide services covered by the contract for a certain period, according to the established quality objectives and standards set by the grantor. And the basic obligation of statutory undertaker is to ensure continuously and permanently an effective operation of the public works or services which form the object of the concession agreement, in accordance with the requirements and purpose set by the grantor.

Concession contracts are not awarded solely for the implementation of infrastructure projects, but also for other activities provided for by law: assets management, delivery of services, execution of works, etc.

The concession procedure is rather complex and expressly regulated by a special law. In addition, the concession law includes a number of compulsory clauses regarding the rights and obligations of each party;

In concessions the payments may be of two types: the grantor pays a certain amount called royalty for the right to use the public goods and services. While the public partner, could pay to the grantor some amounts for providing some services stipulated in the contract. It is considered that such payments from the contracting authority, in certain circumstances, are necessary in order to have a commercially viable PPP project and reduce the commercial risks assumed by the private sector, especially in the initial stages of a project.

As a rule, concession is a long-term contract and its term may vary from 5 to 49 years.

Besides this, as a form of PPP, any concession contract for public works or services must include clauses that establish explicitly the distribution of risks during the whole duration of the contract. In this





regard, irrespective of the risk distribution, it is required that the cost-recovery modality by the concession holder be established, so as to persuade him/her to do their best to reduce those costs.

However, under the concession it is important that the cost recovery by the operator includes, compulsorily, taking over of most of the operating risks related to the concession contract for public works or services. In the concession of works and/or services, an important element is the technical specification and the operator's offer. Under the legislation, the technical specifications and the concessionaire's offer is an integral part of the concession contract. In this regard, general or specific clauses of the concession contract must not conflict with the essential requirements of the technical specifications and any commitments made by the concessionaire in the offer.

In addition to the above-mentioned, an important aspect of the concession is the substantiation of the concession decision. In this respect, as required by law, the contracting authority is required to develop a feasibility study of the concession decision in any event it intends to award a concession contract for public works or services.

Although, in practice, this issue has not raised big question marks so far, special attention should be paid to the fact that if a PPP project is made through a concession contract, it is a special type of PPP with a different set of rules and especially, a different distribution of risks. That is why such projects, in accordance with Article 18, paragraph 5 of the Law no.179 as of 10.07.2008, must be in compliance with the Law on Concessions and the Law no.179 as of 10.07.2008, the last being at the same time as an umbrella law if the Law nr.534 as of 13.07.1995 includes no provisions on a particular sector.

### **Memorandum of association and other forms of association**

Current theory and practice stipulates that PPPs may be carried out through civil society contracts and special legal-organizational forms of association between the public and private sectors. As a result of such combinations some trading companies are set up or public services of national, regional or local interest.

Such a modality of carrying out a PPP is nowadays called also institutional PPP, which differs from the contract-based PPP, the main types of which have been discussed above. In this regard, the main distinction between these forms of PPP is that public - private partnerships are created solely based on contractual relationships (usually in the form of concession contracts or its varieties) while institutional PPPs involve the participation of both public and private partners within a mixed capital entity (through establishment of a project company: civil society or trading company).

In this respect, art. 18 of the Law no. 179 as of 10.07.2008 stipulates expressly that a PPP may be carried out by an association of the private and public partner, either based on a civil contract without establishing any legal entity, or by founding a trading company (limited liability company or joint stock company) with mixed (public-private) capital. In the Rep. of Moldova, the realization of PPPs through various forms of association is regulated besides the Law No.179 of 10.07.2008, by a number of legislative acts of general and special nature.

By analyzing the legal and international experience the following possible forms of association between public and private partners can be inferred:

- Association by concluding a civil contract without establishing a legal entity;
- Association by setting up companies (public services) with or without legal entity (company partnerships and limited partnerships, JSC and LLC);
  - Participation of state or of the territorial-administrative unit as a shareholder in a trading company.

In all these cases, the main shareholders are the state or the territorial administrative units on the one hand and the private sector on the other hand and the benefits and risks (losses) are distributed according to their respective share in the investment.





### **Association based on a civil contract**

As mentioned above, the central and local public authorities have the right to decide on behalf of the interests of the state or local authorities, as appropriate, regarding the establishment of partnerships with the private sector, through various forms, including the conclusion of contracts of civil society. In line with art. 1339 of the Civil Code, by concluding a civil contract, two or more persons (partners, participants) undertake mutual obligation to pursue together economic purposes or other goals without establishing a legal entity, sharing benefits and losses between them.

Among the main features of a memorandum of association to be taken into account when establishing a PPP, the following are stated:

A public - private partnership carried out based on a memorandum of association implies sharing the risks and profits between the parties in proportion to their shareholding in the capital of the association (society);

By this contract, the contracting authorities and the private sector as partners can jointly achieve any goals which may be economic (assets or works): obtain asset benefits or achieving some savings, namely avoiding material losses. Or other purposes, which are immaterial purposes. In this respect, the provisions of the legal framework on non-commercial organizations could be applied to the civil society;

To achieve the common goals, the participants should establish a fund (share capital) and pay contributions in the amount and form established by contract. Contributions may consist of property, including property rights.

If the contract doesn't provide otherwise, the associates participate in revenue sharing and bear losses proportionally to their shares of the capital. The clause which attributes to one of the shareholders all revenues obtained by the company or spares the shareholder of all the losses, which excludes a partner from income sharing or imputes all the losses to it, is void;

Shareholders are severally liable for the obligations of civil society. In internal relations, extent of liability is established in relation to the shares of the social asset, if not otherwise stated in the contract.

Association of companies (public services) with or without legal status.

A PPP can be realized as a company, where a public authority acting as contracting authority decides, under the law, the equity participation in the name and interest, if applicable, of the State or local communities representing thereof, at the establishment of such a company.

Under current law, companies can be of two types: companies without legal entity (partnership and limited partnership) and companies with legal entity (JV, Ltd, etc.).

Participation of the state or territorial-administrative units as shareholders in a company.

Under the current legal framework, state and territorial-administrative units, under certain conditions, may become owners of private businesses or shareholders of different companies. The reasoning for such actions may be diverse: investing available means in profitable businesses in order to achieve additional budget revenues, financial support to economic operators in developing economic potential, saving or drainage of some public services providers of particular importance etc.

The process of acquisition of shares of private companies, in some cases, can become an effective way of establishing PPPs. In this regard, the participation of the state or territorial-administrative units as shareholders of the companies concerned may bring a number of benefits to that society: stability and additional guarantees, reducing certain risks, additional financial resources for investment, growth of statutory capital, tax incentives, etc. On the other hand, the state and territorial- administrative units acquire the right to





participate in administration of public concern enterprises (usually providers of certain public services) and monitor their activities to ensure achievement of public interest objectives overall: providing public services, renovation and infrastructure development, public infrastructure management etc.

Also, in this case we are facing a PPP, when all these conditions and essential elements of a PPP realization through such arrangements are negotiated in advance and expressly stipulated in a legal act, usually a contract. According to the legislation and practice of the past few years, several forms can be highlighted by means of which the State or territorial administrative units may become shareholders or increase their share in a company: accepting investments from state budget or administrative-territorial units or transfer of property rights in immovable public property as contribution to the capital of certain companies (e.g. gas pipelines, aqueducts, heating networks, land, etc.).





### **Annex III: The framework structure of PPP Contract**

The public private partnership contract will include sections with a minimum of the following information:

#### **Chapter I. General conditions**

- 1) Data about the signing parties;
- 2) Purpose of the contract;
- 3) Form and manner of implementation of the contract;
- 4) Object of the PPP (technical and economic feature);
- 5) Proprietary rights;
- 6) Confidentiality;
- 7) Conditions of insurance;
- 8) Force majeure;
- 9) Authorization and approvals.

#### **Chapter II. Duration of contract**

- 10) Establishment of execution period of the PPP;
- 11) Stages of implementation of PPP;
- 12) Operational term of the PPP object, if appropriate;
- 13) Duration of the project implementation;
- 14) Maximum duration of construction or modernization, if appropriate;
- 15) Operation and technical service, if appropriate;
- 16) The means and the procedure for returning the PPP object at the time of expiry of the PPP contract.

#### **Chapter III. Financial and technical commitments**

- 17) Obligation of the public partner regarding the co-financing the PPP object, if appropriate;
- 18) Obligation of the private partner regarding the creation and/or reconstruction of the PPP object;
- 19) Obligation of the private partner concerning the execution of repairs for PPP object in the case when this fact has been included in the list of requirements of the public partner or assumed by the private partner at the stage of conducting the competition for private partner selection;
- 20) Obligation of the private partner regarding the maintenance, in accordance with the law, of facilities for some categories of population;
- 21) Means of assuring the commercial freedom.

#### **Chapter V. Technical and other conditions**

##### **(A) Technical conditions that relate to the following financial aspects:**

- 22) Invested capital or, if appropriate, initial capital subscribed and paid up;
- 23) Debt-to-capital ratio, if appropriate;
- 24) Rate of coverage, if applicable;
- 25) Dividends, if appropriate;
- 26) Rate applicable to interest;







- 27) Currencies of loans and financing sources;
- 28) Recovery means of investment by each party to the contract.

**(B) Technical conditions concerning the construction or upgrading clauses, if appropriate:**

- 29) Standards and specifications;
- 30) Methods of operation;
- 31) Construction quality standards;
- 32) Purchase of materials;
- 33) Construction characteristics, as appropriate;
- 34) Technologies for construction, where appropriate;
- 35) Program of supplementary works, if applicable;
- 36) Temporary and precautionary measures;
- 37) Rules concerning the manner of use of the land owned by the public partner;

**(C) Technical conditions concerning using and operating clauses, if applicable:**

- 38) Performance specifications;
- 39) Amount of goods to be produced, for the work to be performed, services to be provided;
- 40) Infrastructure capacities;
- 41) Equipment specifications;
- 42) Performance criteria in the case of fiduciary administration contract.

**(D) Technical conditions concerning economic and financial clauses:**

- 43) Amount of fees/charges collected and the way of collection;
- 44) Period for which the fees/charges will be levied, if appropriate;
- 45) Frequency and criteria for updating the fees/charges, if applicable;
- 46) Payment for the use of the object of PPP, the form, term and procedure for payment.

**Chapter VI. Monitoring and control**

- 47) Monitoring the design, construction and operation of a public-private project, as well as other activities covering the object of the PPP object;
- 48) Financial auditing mechanisms for the operating period of the public-private project;
- 49) Supervision procedures on the achievement of the public-private project objectives;

**Chapter VII. Risks and guarantees**

- 50) Clauses concerning the distribution of risks throughout it;
- 51) Definition of financial and currency risk guarantee;
- 52) Special guarantees, where applicable;

**Chapter VIII. Liability and indemnification**

- 53) Clause of repair/ indemnification for injury;
- 54) Penalties for the situation of failure to execute the objectives laid down in the contract;
- 55) Liability for failure to perform the obligations in the case of cancellation and/or termination of the contract, if appropriate;

**Chapter IX. Cancellation and termination of contract**

- 56) Contract termination clauses;
- 57) Conditions for unilateral cancellation or agreement of the parties;







58) Clauses of withdrawal from the project, if applicable;

#### **Chapter X. Specific provisions**

59) Requirements for setting up a company for the project realization, as appropriate, the establishment of shares for participation of the public and private partner within the company;

- 60) Land purchase, if applicable;
- 61) Means of ensuring the rights of exclusivity, if appropriate;
- 62) Amendments acceptable in the project;
- 63) Compensatory formulas, if applicable;
- 64) Fees and taxes;
- 65) Prohibitions of substituting the signatory parties;
- 66) Procedure for communication;

#### **Chapter XI. Final provisions**

- 67) Definitions and interpretations;
- 68) Legislation and applicable jurisdiction;
- 69) Amendments in legislation;
- 70) Amendments to the contract;
- 71) Notifications;
- 72) Method for settlement of disputes;
- 73) Contract language;

**Annexes** (drawings, tables, sketches, technical data and/or other type, if applicable.)

Note: The form, structure and content of the PPP contract will be negotiated and finalized taking into account the above Sections, which can be partly or wholly detailed in the content of the contract or to which can be added and other specific terms of PPP project to be signed.

#### **Specific provisions of concession contracts related to lands or other natural resources**

The concession contract of lands and other natural resources shall also include:

1. the characteristics of the environment, soil and other natural resources, as well as the amount of their exploitation;
2. the technological norms of their exploitation;
3. conditions of land re-cultivation;
4. compensation payments for withdrawing from circulation the lands and other natural resources;
5. conditions of protection of the accompanying natural resources;
6. the amount and way of storage the production wastes;
7. maximal admissible norms of the impact on the environment;
8. the way of distributing the expenses for the prognosis, exploration and capitalization of natural resources, as well as the risks and incomes related to these activities.





## **Annex IV: The content-framework of the feasibility study**

### **I. General data:**

- 1) goal and objectives of the feasibility study
- 2) data about the public partner
- 3) data on the natural/ legal person developing the feasibility study.

### **II. Description of general framework for implementing a public private partnership project:**

- 1) name of the PPP;
- 2) short presentation of the existing situation, revealing major gaps in the current situation which brings about the need for investment, including, where appropriate, tables, graphical maps, drawn sketches, photographs, etc. explaining the actual situation and the need for investment;
- 3) relevance of promoting the public private partnership project including technical and economic justification that proves the need and appropriateness of the PPP project;
- 4) fitting the objective into the general, sectoral or regional short and medium-term investment policies;
- 5) beneficiaries of the PPP project;
- 6) legal framework which regulates the field.

### **III. Main features of PPP project:**

- 1) objectives of PPP project;
- 2) results achieved by implementing the PPP project;
- 3) activities for implementing the PPP;
- 4) necessary investments for carrying out PPP project.
- 5) form and modality of PPP project implementation;
- 6) technical-economic scenarios for achieving the objectives of the PPP project;
- 7) organizational and implementation procedures of the PPP project;
- 8) PPP project implementation program;
- 9) cost estimation for each item and component of the PPP project;
- 10) data on the site where the object is to be located, the legal status of the site, the contract form/type on the basis of which it shall be transmitted to the private partner; the estimated area of the site;
- 11) justification of the PPP project term and the conditions under which the object or service shall be given over after contract completion;
- 12) other elements needed to prove the safety and viability of the project;

### **IV. Identification and analysis of risk-sharing options according to their management capacity:**

- 1) political risk;
- 2) legal risk;
- 3) economic and financial risk;
- 4) execution risk;
- 5) environmental risk, etc.

### **V. Factors that ensure the sustainability of the PPP project:**

- 1) major technical-economic indicators of investment (the total investment amount; staggering return on investment; identifying the investment and defining objectives, including the specification of the reference period);





- 2) funding resources of the investment (equity, bank loans, funds from the state/local budget; external credits contracted or guaranteed by the State; external grant funds; other legally constituted resources);
- 3) financial analysis, including the calculation of financial performance indicators: internal rate of return and value for money;
- 4) economic analysis, including the calculation of economic performance indicators: project implementation graphs using GANTT, PERT, SWOT model, etc.;
- 5) estimates of employment by implementing the PPP project, where appropriate;
- 6) environmental impact and its mitigation solutions including the related costs;





## **Annex V: Main stages of assigning PPP contracts**

- Identification of the PPP project object and objective;
  - Drafting the feasibility study and have it approved by PPA;
- Based on the feasibility study:
- Developing and approval of project documentation;
  - Creation of the Commission for the selection of the private partner;
  - Publishing a press release and project documentation;
  - Financial decision and assigning a draft contract;
  - Signing the contract.





## **Annex VI: Legal framework on PPP**

1. Law no. 179-XVI of 10.07. 2008 on PPP.
2. Law no. 534- XII of 13.07.1995 on concessions.
3. Law no. 1308-XIII of 25.07.1997 on normative pricing and land sale and purchase modality
4. Law no. 91-XVI of 05.04.2007 on state owned lands and their delimitation.
5. Law no. 523-XIV of 16.07.1999 on the public assets of the administrative-territorial units.
6. Law no. 130 of 29.04.2004 on amending and completing the law on public utility services no. 1402-XV as of 24 October 2002.
7. Government decision No 245 of 2 April 2012 on the National Council for Public and Private Partnership
8. Government Decision No 1008 of 10 September 2007 on approving the staff-limit and the Regulation of the Public Property Agency under the Ministry of Economy.
9. Government Decision No 419 of 18 June 2012 on approving the list of state assets and public works and services of national interest proposed for Public Private Partnership.
10. Government Regulation No 476 of 4 July 2012 on standard procedures and general requirements for private partner selection
11. Government Regulation on giving into concession public utility services approved by the Government Decision No 1006 of 13 September 2004.
12. Regulation on the Organization and Functioning of the Ministry of Economy, the Structure and Staff-Limit of its HQ, approved by the Government Decision no. 690 of 13 November 2009.
13. Government decision No.675 of 06.06.2008 on Public Assets Register
14. Order No. 143 of the Ministry of Economy of 02.08.2013 on approving the project risk distribution preliminary matrix.

