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# Public-Private Partnership as a Tool for Re-Building Ukraine

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## Volodymyr

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Volodymyr Yaremko, FCIArb, provides legal advice to clients of diverse background in their Ukraine and Eastern European related activities.

He is a Co-Chair of the infrastructure committee of the American Chamber of Commerce in Ukraine, as well as the only Ukrainian who is certified by the FIDIC as Adjudicator and included into the FIDIC Presidents List.

“I enjoy cooperation with Volodymyr Yaremko, who handles ICC arbitration matters. He is creative, fast and results focused.” **The Legal 500, Ukraine, 2020**

**Recognised in Arbitration by *Who's Who Legal: Arbitration 2021***

**Recognised in Litigation by *Who's Who Legal: Litigation 2021***

He specializes in providing legal support in multi-jurisdictional disputes in national courts and in international commercial and investment arbitration. Volodymyr has more than 12 years of experience representing clients in arbitration proceedings of various arbitral institutions including ICSID, ICC, LCIA, SCC and VIAC, as well as International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (ICAC).

Volodymyr has been involved in *Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine* (SCC Arbitration No. V 2015/092) in which he helped Ukraine to win its largest investment arbitration case. In this arbitration the State of Ukraine has defeated the Energy Charter Treaty claim with value of around USD 6 bln. filed by the minority shareholders of PJSC Ukrnafta, one of Ukraine's largest oil and gas producers.

He also focuses on advising clients on various matters in large-scale infrastructure projects. Volodymyr gained particularly solid experience in projects implemented under the FIDIC forms of contracts with the assistance of international financial organizations such as the EBRD, EIB and World Bank.

In addition to English, Volodymyr speaks Ukrainian, Russian and Polish.

PPP in Ukraine:

# Legal Framework and Pilot Projects

# Basics of Ukrainian PPP legislature

- Law of Ukraine On Public-Private Partnership of 2010
- Law of Ukraine On Concession of 2019
- Various Resolutions of the Cabinet of Ministers of Ukraine on procedure, methodology, engagement of advisors, etc.
- Unsolicited proposal from a private partner is possible, providing for a preference in the process of selection and the right to reimburse the costs, if the initiating bidder is not selected

## Basics of Ukrainian PPP legislature (cont.)

- Three-stages/ two-stages procedure for publicly/ privately initiated projects
- Limited timeframes: pre-qualifications (~ 60-90 days), bids submission (~ 60 days) and contract negotiations (90-180 days)
- Limited possibilities for court intervention into the PPP/ concession process is provided in the Administrative/ Civil/ Commercial Procedural Code
- Draft law no. 5090, providing for long-term budgeting and financing of PPP/ concession project, adopted on 16<sup>th</sup> February 2022

# Lessons Learned from Pilot Olvia and Kherson Sea-Ports Concession Projects

- Due diligence of an object (asset) of the PPP/ concession shall be started without delay with particular attention to: land, movable and immovable property, labour relations, third party rights, licenses and permits, litigations, contractual relations, infrastructure and communications
- Tight timeframes and limited bargaining power for the contract negotiation
- Various formal requirements which shall be scrutinized in advanced and might require some time to meet
- Importance of strong and consistent team of consultants for successful completion of the projects

PPP in Ukraine:

# Projects under preparation

(currently mostly on hold)



# IFC/ EBRD supported projects

- Chornomorsk Sea Port
- PPP Healthcare Project in Lviv
- PPP Road Programme
- International regional airports
- Regional railway stations



# Unsolicited proposals in road sector

- Krakovets - Lviv - Brody - Rivne (> 200 km)
- Stryi - Mukachevo (> 150 km)

PPP in Ukraine:

# Fast-track PPP initiative for Re-Building Ukraine

## Questions still to be answered:

- Draft law with amendments to the PPP Law has been published in June 2022 – for good or for bad?
- Payments: revenue-based or availability scheme?
- Whether it is sustainable to use template project documentation/ pilot projects experience for fast-track procedures?
- Which projects shall go first as a priority (housing, hospitals, etc.)?
- How to diversify and strength a capacity of the public side team?



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