



Public Private Partnerships in Moldova: challenges and opportunities

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Definition

Public-private partnership - long term contract between the public and the private partners, with the purpose of making activities of public interest, that is concluded on the capacities of each partner to respectively distribute resources, risks and benefits



Public-private partnership object

- (1) Public-private partnership is based on a cooperation between the public and private partner, having the goal to increase the efficiency of public patrimony, in which every partner undertakes concrete risks and responsibilities.
- (2) The public-private partnership object can refer to any good, work, public service or any function carried out by the public partner except for those directly prohibited by the law.
- (3) The public-private partnership can be set up on the basis of infrastructure objects and/or existing facilities or it is based on setting up new goods and/or public utility facilities.



Principles of PPP in the Republic of Moldova:

- equal treatment, impartiality and non-discrimination;
- transparency
- equilibrium;
- provision of competition;
- freedom of contract;
- cooperation.

Main forms of PPP:

- contractor/service agreement;
- agreement on fiduciary management;
- lease/rental agreement;
- service concession agreement;
- simple partnership agreement/ memorandum of association.



Steps undertaken by the Government for PPP promotion

The Government understands that successful PPPs require an effective regulatory and institutional environment providing for the best use of partners' resources. A range of measures have been adopted so far to streamline the regulatory and institutional framework.



Regulatory environment

In 2008 the Law on Public-Private Partnerships has been adopted establishing basic principles and possible forms of relationship between public and private sectors. In order to bring the existing legal framework in accordance with the provisions of the Law on Public-Private Partnerships, the Government has promoted amendments to a dozen of other laws including, on entrepreneurship and enterprises, concession, local public finance, public procurement, to name only the most important. The current regulatory environment eliminates administrative barriers, expands autonomy of the local public authorities, and simplifies the access of private investment to the public sector.



Institutional set-up

- **Ministry of Economy** – elaborates policy documents regarding development of public-private partnership and proposed necessary regulatory amendments.
- **Public Property Agency** - coordinates the initiation and implementation of PPPs at national level and promotes their proper implementation.



Legal premises for developing the PPP Law in Moldova

Strategy for attracting investments and promoting exports for 2006-2015

1. Denationalization of public property, including implementation of the principles of PPP;
2. Promotion of infrastructure investments through active participation of the state in PPP;
3. Implementation of PPP for cooperation between public and private investment in infrastructure, especially in those areas where major investments are needed, depending on their strategic importance for national economy.

Specific elements of the implementation of public-private partnership mechanism in the development of technical infrastructure planned to be used:

- concession;
- foundation of joint enterprises selecting potential investors for strategic investment projects;
- existing businesses social capital raise on investors account;
- transmit assets under management;
- other specific PPP principles.



Key economic assumptions to develop the PPP Law were:

- higher quality for public services;
- reduce budgetary expenditures;
- efficient use of public property;
- effective use of private sector experience;
- attracting private investment in infrastructure priority projects;
- stimulating innovation development through competition;
- business access to previously restricted economic spheres, such as the transport infrastructure, utilities and others.



Current status of the legal framework in Moldova related to PPP

- Law on PPP no 179 of 10.07.2008

Secondary legislation for PPP

- Law on concessions;
- Law on Leasing;
- Law on investments in entrepreneurial activity .

Laws (decisions, statutes and regulations) governing the rights, limitations and obligations of potential partners:

- Law on Local Public Administration
- Law on public services for municipal
- Bankruptcy Law
- Economic agents regulations
- Law on entrepreneurship and business
- Law on limited liability companies
- Law on Joint Stock Companies
- Civil Code

Laws governing areas that are directly or indirectly related to the PPP, such as:

- Law on Industrial Parks
- Law on regional development
- State law regulation of external trade

Rules on government procurement of goods, works and services

- Procurement Law
- Law on Administration and denationalization of public property
- Specific legal provisions governing matters related to water supply, electricity, education and other sectors.

Moldova's international commitments, such as:

- Multilateral treaties (eg. World Bank, United Nations, European Union)
- EU Treaty
- International standards for environmental protection
- International accounting standards such as IAS, IFRS and IPSAS



Legal framework and success factors

- Transparency
- Clear structures and responsibilities
- Early involvement of partners
- Approach of mutual benefit (public-private-citizens/beneficiaries)
- Clear commitment of all partners



Advantages

- Achieve more rapid infrastructure projects;
- A reduction in overall of the project costs;
- Improving the quality of public services;
- Improving public sector management through exposure to the rigors of the competitive market services;
- Taking over responsibilities and risks to the private sector and disposal of the industry;
- Strengthen market economy and promoting a healthy environment for business
- Achieve as soon as possible technical and operational parameters practicing throughout Europe
- The emergence of positive effects in labor (especially in construction, services, technology); Efficient use of expertise held by the private sector in service provision
- The international interest in promoting the PPP is heading for 3 main directions:
 - investment in infrastructure;
 - increasing efficiency of financial resources;
 - greater commercial exploitation of the funds invested.



Risks

- Risk to recover the investment, lack of guarantees - most frequently invoked reason
- Risk of partnership abandonment by one of the partners in an advanced stage of the project, when already made some investments;
- Removing government social problems, causing PPP actions targeting economic principles;
- Encourage development of private interest groups over others;
- Priority to short or medium term projects at the expense of the strategy.



Risks

- Achieve risk of running income from leased public services (level of use and rate)
- Risk choice of the private sector partners (incompetence and incapacity)
- Risk of not fitting pre-calculated costs
- Risk of non contractual obligations
- Political risk
- Environmental risk
- Risk of latent deficiencies (state infrastructure systems)
- Public acceptance risk
- Risk of project sustainability (availability of people to pay for services provided by the project)



The National Committee for PPP

- assess state policies in PPP field;
- define the priorities and strategies for public-private partnership field in the Republic of Moldova;
- evaluation of Public Property Agency activity in the implementation of the regulations for public-private partnership;
- assessment based on reports submitted by agency of the barriers and gaps in the achievement of effective public private partnerships and making the results of initiatives and proposals presented by the Government for approval;

The list of Committee's members, as well as the regulation of its activity shall be approved by the Government.



Agency of Public Property under the Ministry of Economy

- coordination of the initiation and carrying out the PPP at the national level;
- identification of the objectives of the PPP projects of the national level and elaboration of the general requirements regarding the selection of the private partner, as well as the elaboration of the conditions of public-private partnerships;
- development and enforcement of the standard documentation regarding the procedures for private partners' selection, dissemination of best practices and recommendations in the field of PPP fulfillment;
- monitoring, evaluation and control of the way the public partners are complying with the selection procedures of the private partners, to the carrying out of the PPP;
- granting the public and private partners assistance necessary for the present law enforcement;
- registration and publication of informative memos and documents related to the procedures for private partners' selection.



Local public administration authorities' competence

- approval of list of goods under the territorial administrative units' ownership, as well as list of goods and services with public local interest suggested for public-private partnership;
- approval of objectives of the public-private partnership and general requirements regarding the private partner's selection and of public-private partnership conditions;
- approval of tariffs for communal public services in accordance with the Law on communal public services;
- appointment of the members of private partner's selection commission.



Schemes for PPP contracts

- design – build – operation (DBO)
- build - operation - renewal (BOR)
- build - operation - transfer (BOT)
- build – transfer – operation (BTO)
- leasing - development - operation (LDO)
- rehabilitation - operation - transfer (ROT)
- other schemes not prohibited by law.



Phases of PPP initiation

- Public partner's identification of the public-private partnership object ;
- Carrying out feasibility study by Public partner
- 3. Public partner's development of the documentation necessary for the carrying out of the private partner selection competition
- 4. Public partner's appointment of the members for the private partner selection commission;
- 5. Publication in the Official Monitor of the RM and in the Bulletin of Acquisitions of an informative memo regarding the carrying out of the private partner selection competition
- 6. Receiving of bids and their examination.
- 7. Taking the decision regarding the appointment of the private partner or regarding the rejection of all received bids.



Partners' Benefits

- All partners involved in relations of Public-Private Partnerships benefit of a clear and long-term regulatory framework.
- In case of changing national and local regulations, the private partners are entitled to be compensated for any damages incurred.
- Private sector benefits of necessary advisory and promotion services.



PPP priorities by sectors

➤ **Energy:**

- upgrade power-generating facilities
- develop alternative energy sources

➤ **Transport:**

- -roads rehabilitation and maintenance
- -public transport

➤ **Municipal utilities:**

- construct/modernize municipal water and sewerage systems
- waste management

➤ **Business infrastructure:**

- industrial parks



How PPPs are initiated in Moldova?

- Relevant central or local public authority sets projects' objectives and general conditions;
- A project feasibility study is developed to be further endorsed by Public Property Agency;
- A decision on organization of tender for private partner selection is adopted;
- The tender is organized and private partner selected; appeals and petitions are accepted during 15 days;
- The contract draft is prepared within 30 days since the tender decision was taken;
- Negotiating and signing the contract with the private partner within a maximum period of 30 days.



Tentatives of PPP in Moldova

- Free wireless Internet access in high schools in Chisinau
 - Chisinau City Hall – private internet provider
- Free wireless internet access in parks in Chisinau
 - Chisinau City Hall – private internet provider
- Advanced tomography equipment

Radiology and Imaging Center of the Institute of Neurology and Neurosurgery, Chisinau – GSM operator

Possible PPP

- Republican stadium in Chisinau
- Valea Morilor Lake
- Highway "Union" and the gas pipeline "Independence"



Questions and discussions