

LAW OF UKRAINE

On the Public-Private Partnership

Having amended in accordance with Laws

No. 5007-VI (5007-17) as of 21.06.2012,

No. 5406-VI (5406-17) as of 02.10.2012,

No. 5463-VI (5463-17) as of 16.10.2012,

No. 817-VIII as of 24.11.2015

{In the text of the Law, the words “public authorities” have been replaced in all cases with the words “public bodies” in the appropriate case as prescribed by Law No. 5463-VI (5463-17) as of 16.10.2012}

This Law establishes the organizational and legal framework of the interaction of public partners with private partners and the basic principles of the public-private partnership on a contractual basis.

Chapter I

GENERAL PROVISIONS

Article 1. Definition and characteristics of the public-private partnership

1. The public-private partnership is a cooperation between the state of Ukraine, or the Autonomous Republic of Crimea, or local communities represented by relevant public bodies, or local self-government bodies (public partners), and legal entities, save for state-owned and municipal enterprises, or sole proprietors (private partners), which is based on the contract in the manner prescribed by this Law.

{unnumbered paragraph 1, part 1, article 1 as amended according to the Law of Ukraine No. 817-VIII as of 24.11.2015}

A number of entities which satisfy the requirements of this Law for being a private partner can be private partner parties in the contract concluded under the public-private partnership. Relations between private partners and procedure of designation of the private partner to present interests of other private partners is to be regulated by the terms of the contract between private partners, or the contract concluded under public-private partnership. Such entities shall be jointly liable for the obligations stipulated by the contract having been concluded within the framework of the public-private partnership.

{unnumbered paragraph 2, part 1, article 1 as amended according to the Law of Ukraine No. 817-VIII as of 24.11.2015}

Besides the winner (winners) of the bidding on the private partner designation, a legal entity founded for execution of public-private partnership by the winner (winners) of the bidding on the private partner designation may be considered a private partner, if this is envisaged by the terms of the relevant bidding, provided that the winner (winners) directly or mediately owns (own) more than 50% of the statute capital of this legal entity during the term defined by the contract concluded under the public-private partnership. Not later than in a month after such a legal entity is officially registered, relevant amendments to the contract concluded under the public-private partnership, including the regulations on subsidiary responsibility of the winner (winners) for the liabilities of this legal entity, should be made.

The winner (winners) of the bidding bears (bear) full responsibility for discharge of obligations according to the contract of public-private partnership.

Upon the decision of the public partner SOE, municipal enterprise, enterprise of the Autonomous Republic of Crimea or commercial partnership owned (100% of statute capital belonging to reveal body) by the state, territorial community or Autonomous Republic of Crimea, may be a part of the contract concluded under the public-private partnership on the side of the relevant public partner. Public partner bears subsidiary liability for the obligations of such company or commercial partnership according to the contract concluded under the public-private partnership.

{unnumbered paragraph 3, part 1, article 1 has been substituted by paragraphs 3-5 according to the Law of Ukraine No. 817-VIII as of 24.11.2015. Thus paragraphs 4-8 should be considered paragraph 6-10}

The characteristic features of the public-private partnership include:

{unnumbered paragraph 6, part 1, article 1 as amended according to the Law of Ukraine No. 817-VIII as of 24.11.2015}

providing rights for management (use, exploitation) of the partnership object or acquiring, creation (construction, reconstruction, modernization) of public-private partnership object with further management (use, exploitation), on the terms of accepting and fulfillment of investment liabilities by private partner in accordance to the agreement conducted under the public-private partnership;

{unnumbered paragraph 7, part 1, article 1 as amended according to the Law of Ukraine No. 817-VIII as of 24.11.2015}

a long-term relationship (from 5 through 50 years);

{unnumbered paragraph 8, part 1, article 1 as amended according to the Law of Ukraine No.817-VIII as of 24.11.2015}

transferring a part of risks to the private partner while implementing the public-private partnership;

{unnumbered paragraph 9, part 1, article 1 as amended according to the Law of Ukraine No.817-VIII as of 24.11.2015}

investing by the private partner in the property of the partnership from sources not prohibited by law.

{unnumbered paragraph 10, part 1, article 1 as amended according to the Law of Ukraine No.817-VIII as of 24.11.2015}

Article 2. Legal framework of the public-private partnership

1. The legal principles of the public-private partnership is the Constitution of Ukraine (254k / 96-VR), the Civil Code of Ukraine (435-15), the Commercial Code of Ukraine (436-15), this Law and other legislative acts of Ukraine and international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine.

2. If the international treaties of Ukraine, ratified by the Verkhovna Rada of Ukraine, have established rules other than those stipulated in this Law, the rules of the international treaty shall prevail.

Article 3. Basic principles of the public-private partnership

1. The basic principles of the public-private partnership include:

equality of public and private partners before the law;

prohibition of discrimination of the public or private partners' rights;

reconciling interests of public and private partners to obtain a mutual benefit;

immutability of the purpose and ownership of facilities owned by the state or communities or the Autonomous Republic of Crimea, transferred to the private partner throughout the period of the contract, having been concluded under the public-private partnership,

recognition of the rights and obligations provided by the law of Ukraine and established by the provisions of the contract, having been concluded under the public-private partnership, by public and private partners

equitable distribution of risks between public and private partners, associated with the implementation of contracts having been concluded under the public-private partnership;

designation of the private partner on a competitive basis, except as prescribed by law.

Article 4. Scope of application of the public-private partnership

1. The public-private partnership is used in the following areas:

prospecting, mineral exploration and extraction, save for those implemented on the terms of production sharing contracts; {unnumbered paragraph two of paragraph one of Article 4 as amended by Law No. 5406-VI (5406-17) as of 02.10.2012}

production, transmission and supply of heat energy and distribution and supply of natural gas;

construction and / or operation of highways, roads, railways, runways at airports, bridges, road overpasses, tunnels and subways, sea and river ports and their infrastructure;

mechanical engineering industry;

collection, purification and distribution of water;

health care;

tourism, recreation, culture and sport;

operation of irrigation and drainage systems;

treatment of waste;

{unnumbered paragraph 10, part 1, article 4 as amended according to the Law of Ukraine No.817-VIII as of 24.11.2015}

production, distribution and supply of electricity;

property management;

providing social services, managing social institution;

{part 1 of the article 4 has been supplemented with paragraph 13 according to the Law of Ukraine No.817-VIII as of 24.11.2015}

production and implementation of energy-saving technologies, construction and capital repairs of residential houses partially and completely ruined as a result of military operations on the territory of Counter-Terrorism Operation;

{part 1 of the article 4 has been supplemented with paragraph 14 according to the Law of Ukraine No.817-VIII as of 24.11.2015}

construction of module houses and temporary housing for internally displaced persons;

{part 1 of the article 4 has been supplemented with paragraph 15 according to the Law of Ukraine No.817-VIII as of 24.11.2015}

providing education services and health care services;

{part 1 of the article 4 has been supplemented with paragraph 16 according to the Law of Ukraine No.817-VIII as of 24.11.2015}

managing heritage-listed buildings and culture property sites.

{part 1 of the article 4 has been supplemented with paragraph 17 according to the Law of Ukraine No.817-VIII as of 24.11.2015}

2. The public-private partnership can be used in other areas, save for the economic activities allowed only to state enterprises, institutions and organizations according to law. The public-private partnership is applied with consideration of peculiarities of the legal regime for particular facilities and particular activities prescribed by law.

3. Part 3 of the Article 4 has been excluded.

{according to the Law of Ukraine No.817-VIII as of 24.11.2015}

Chapter II.

FORMS AND FACILITIES OF THE PUBLIC-PRIVATE PARTNERSHIP

Article 5. Forms of the public-private partnership

1. As part of the public-private partnership in accordance with this Law and other legislative acts of Ukraine, contracts may be concluded about:

concession;

managing property (only if investment obligations of the private partner are envisioned by the contract concluded in the framework of public-private partnership);

{part 1 of Article 5 has been supplemented with new paragraph 3 according to Law No. 817-VIII as of 24.11.2015. Thus paragraphs 3-6 should be considered 4-7}

joint activities;

{unnumbered paragraph four of paragraph 1 of Article 5 has been excluded according to Law No. 5406-VI (5406-17) as of 02.10.2012}

other contracts.

The significant terms of contracts being concluded within the implementation of public-private partnership must comply with the requirements established by laws of Ukraine.

{unnumbered paragraph 7 of part 1 of Article 5 according to Law No 817-VIII as of 24.11.2015}

2. Part 2 of the Article 5 has been excluded.

{according to the Law of Ukraine No.817-VIII as of 24.11.2015}

3. Contracts concluded under paragraph one of this article shall be regulated by the legislation with account of characteristic features provided by this Law, if they have been decided to get implemented under the public-private partnership in the manner prescribed by this Law.

Dealings related to initiating public-private partnership, designation of the private partner, preparation to the conclusion and drafting the contracts, conclusion and execution of the contracts, concluded under the public-private partnership according to part 1 of this Article, are regulated by this Law, if other procedure of initiating public-private partnership, designation of the private partner, preparation to the conclusion and drafting the contracts, conclusion and execution of the contracts is not provisioned the law regulating relevant form of public-private partnership. If the contract that has to be concluded under the public-private partnership, is a mixed agreement, all the dealing on imitating public-private partnership, preparation to conclusion of the contract and designation of the private partner is regulated by this Law.

{part 3 of Article 5 according to Law No 817-VIII as of 24.11.2015}

4. This Law shall not apply to production sharing agreements, the conclusion, implementation and termination of which are regulated by the Law of Ukraine “On Production Sharing Agreements” (No. 1039-14).

{Article 5 has been supplemented with paragraph four according to Law No. 5406-VI (5406-17) as of 02.10.2012}

Article 6. Public procurement in the public-private partnership

1. Public procurement in the public-private partnership shall be executed in accordance with the law on procurement of goods, works and services at the expense of public funds.

2. Foreign business entities and Ukraine’s business entities shall enjoy equal rights as regards participation in public procurement.

Article 7. Public-private partnership property

1. Part 1 of the Article 7 has been excluded.

{according to Law No 817-VIII as of 24.11.2015}

2. The public-private partnership property might be:

Actual, particularly reproducible (by reconstruction, modernization, technical re-equipment) facilities, including subsurface allotments;

facilities created or acquired during implementation of the contract concluded in the framework of public-private partnership;

{part 2 of Article 7 according to Law No 817-VIII as of 24.11.2015}

3. The transfer of facilities owned by the state or communities or the Autonomous Republic of Crimea to the private partner for execution of the contract concluded under the public-private partnership does not involve the private partner’s ownership of these facilities.

{unnumbered paragraph 1, part 3 of Article 7 as amended according to Law No 817-VIII as of 24.11.2015}

These facilities shall be returned to the public partner upon the termination of the contract concluded under the public-private partnership.

The facilities, construction of which has been completed, or rebuilt or reconstructed in the public-private partnership shall be owned by the public partner.

4. The property of the public-private partnership created or acquired by private partner on implementation of the contract concluded may belong to the private partner under the ownership right and be used by either public or private partner, or other party of the contract in the manner and under the terms defined by this contract, if other is not provisioned by the law, regulating the dealing related to execution of the contracts described in the Article 5 of the Law. These properties are to be transferred from the private partner to the public partner in the manner and term defined by the contract concluded under the public-private partnership, but not later as the date of contract termination. After the transfer of ownership rights for the objects created or acquired by private partner to the state, territorial community of Autonomous Republic of Crimea, private partner has

priority right to use such property in order to discharge its obligation in the manner and under the terms of the contract concluded under the public-private partnership up to the termination of this contract.

Contract concluded under the public-private partnership may provide the facilities created or acquired to execute the contract and belonging under the ownership right to the private partner should not be pledged, given to joint activity, leasing, rent and other form of usage or ownership. These encumbrances over the facilities created or acquired under the contract and belonging to the private partner are to be indispensably registered in the manner envisioned by the law.

Contract concluded in the framework of public-private partnership may allow joint partial ownership of created or acquired facilities of public-private partnership by public and private partners. The procedure of the designation of the shares in the ownership right for created or acquired objects, that are mutually owned by public and private partners, the terms and procedure of assignment of shares in the right of joint partial ownership are to be defined in the contract concluded under the public-private partnership.

{Article 7 has been supplemented with part 4 according to Law No 817-VIII as of 24.11.2015. Thus the parts 4-5 should be considered parts 5-6}

5. Facilities that have been designated for privatization may not be assigned for public-private partnership.

6. The property of the public-private partnership cannot be privatized for the whole period of the public-private partnership implementation.

Article 8. Use of land lots for the implementation of public-private partnership

1. If a land lot is required to implement a public-private partnership, the public partner shall transfer according to the Land Code of Ukraine to the private partner a land lot, where the facilities of public-private partnership are located, together with the facilities of public-private partnership for the period set by the contract concluded under the public-private partnership, or provides not later than the term when the contract concluded under the public-private partnership comes into force the acquisition by a private partner of right to use the land lots, provided according to the law for the construction of public-private partnership facilities.

In all other cases a public partner on the demand of a private partner provides land plots, necessary for the implementation of the public-private partnership in the manner defined by the law and described in such contract.

If the contract concluded under the public-private partnership is terminated, private partner instantly loses the right to use the land plot provided by public partner for implementation of the public-private partnership.

{paragraph 1, of the part 1 of Article 8 has been substituted with paragraphs 1-3 according to Law No 817-VIII as of 24.11.2015. Thus the paragraphs 2-6 should be considered paragraphs 4-8}

Should the competent authority decide on the implementation of a public-private partnership, land tenure projects on land lot allotment, other land tenure documentation, required under law for the land lot to be provided for use, and documentation about land lots required for the private partner to implement such a partnership, shall be developed at the commission of the public partner.

The public partner shall agree land tenure documentation with appropriate public or self-government bodies in the manner prescribed by law and, in cases stipulated by law, receive a positive conclusion of the public land management expert commission in the manner prescribed by law.

Activities on development (elaboration) of land tenure documents and their expert examination shall be funded at the expense of respective budgets or at the expense of the entity, which has submitted a proposal to implement a public-private partnership.

If activities on development (elaboration) of land tenure documents and their expert examination are paid by the entity, which has submitted a proposal to implement a public-private partnership, it does not create any advantages for that entity in the bidding on designation of a private partner compared to other bidders.

Documented expenses incurred by the public partner and / or entity, which has submitted a proposal to implement a public-private partnership, for development (elaboration) of land tenure documents and their expert examination shall be reimbursed by the private partner pursuant to provisions of the contract concluded within the framework of the public-private partnership.

2. The procedure and conditions of acquisition by the private partner of the right to use land lots referred to in paragraph one of this Article shall be specified in provisions of the bidding on private partner designation for conclusion of a contract under public-private partnership.

3. Upon termination of the contract concluded under the public-private partnership, the private partner shall release the land lot, given it to implement the public-private partnership under this Article.

4. If the contract on public-private partnership includes use (operation) or management of power lines, communications, pipelines and other linear communications, laying and operation of which have been established to be subject to servitude, such servitude may be implemented on behalf of the public partner by the private partner.

Existence of such servitudes shall be stated in provisions of the bidding on the private partner designation and the contract concluded under the public-private partnership.

Article 9. Sources to fund the public-private partnership

1. The public-private partnership might be funded at the expense of
financial resources of the private partner;
funds borrowed in the prescribed manner;
the state and local budgets;
other sources not prohibited by law.

Chapter III

DECISION-MAKING ON PUBLIC-PRIVATE PARTNERSHIP IMPLEMENTATION

Article 10. Proposal on Public-Private Partnership Implementation

1. Proposals for the implementation of public-private partnership on state property shall be prepared by relevant executive authorities or entities that may be private partners under this Law, and shall be submitted to the body authorized by the Cabinet of Ministers of Ukraine.

{part 1 of Article 10 as amended by the Law No 817-VIII as of 24.11.2015}

2. Part 2 of Article 10 has been excluded.

{according to the Law No 817-VIII as of 24.11.2015}

3. Part 3 of Article 10 has been excluded.

{according to the Law No 817-VIII as of 24.11.2015}

Article 11. Analysis of the public-private partnership performance

1. Analysis of the public-private partnership performance shall be done based on the public-private partnership proposal or according to the initiative of the authorized body through:

1) a detailed study of socio-economic and environmental impacts of the public-private partnership implementation;

economical and financial indicators of the public-private partnership implementation;

social impact of a public-private partnership implementation, including improving service quality and the level of demand supply (with services and works);

environmental impact of a public-private partnership implementation, including possible negative impact to the environment;

2) feasibility study of the project with involvement of the private partner compared to the absence of such involvement;

3) identification of types of risks of the public-private partnership implementation, their assessment and determination of a risk management mode;

4) determination of a public-private partnership implementation mode;

5) determination of social and economical perspectives after the termination of the contract under public-private partnership.

2. Analysis of the public-private partnership performance and identification of possible risks associated with its implementation shall be done as for the property:

as regards state property – by the central executive body performing functions of relevant state-owned facilities management, or if such body is not determined - by central executive body forming and implementing state policy in public-private partnership;

as regards communal property – by the executive self-government body authorized by the village, town, city, district or regional council, or if such body is not determined - by the executive committee of the village, city, regional or district council;

as regards property of the Autonomous Republic of Crimea – by the body authorized by the Council of Ministers of the Autonomous Republic of Crimea, or if such body is not determined - by the Council of Ministers of the Autonomous Republic of Crimea.

If several public partners take part in public-private partnership, they cooperatively conduct the analysis of the public-private partnership performance.

3. The procedure for the public-private partnership performance analysis is established by the Cabinet of Ministers of Ukraine, with due account of the specifications defined by this Law.

4. Based in the finding of the analysis of public-private partnership performance a conclusion is to be drawn. The conclusion of the analysis of public-private partnership performance on the state-owned facilities is to be validated by the central executive body responsible for forming and implementing state policy in public-private partnership and other state bodies defined in the Procedure of analysis of public-private partnership performance.

The conclusion of the analysis of public-private partnership performance on the facilities owned by the Autonomous Republic of Crimea is to be validated by by the central executive body responsible for forming and implementing state policy in public-private partnership, if this conclusion foresees provision of the state support through financing from the state budget.

The conclusion of the analysis of public-private partnership performance on the state-owned facilities is to be published in the official web-site of the central executive body responsible for forming and implementing state policy in public-private partnership.

{Article 11 according to Law No 817-VIII as of 24.11.2015}

Article 12. Study of socio-economic and environmental impacts for the public-private partnership implementation

1. A study of socio-economic and environmental impacts of the public-private partnership implementation shall be conducted from the analysis of:

economic and financial performance indicators of the partnership implementation, including a comparison of indicators of implementation through the public-private partnership, including projected costs and benefits of its implementation, with indicators of implementation of such activity under other conditions than through the public-private partnership;

social impacts of the partnership, including improvement of service quality and a satisfaction level of demand for goods (through operations and services);

risks associated with the implementation of partnership, taking into account different means of their distribution between public and private partners and an impact of relevant distribution of risks on financial obligations of the public partner;

environmental effects of the partnership based on a possible negative impact on the environment.

Article 12. Excluded

{according to the Law No 817-VIII as of 24.11.2015}

Article 13. The decision-making on the public-private partnership implementation

1. A decision on the implementation of public-private partnership regarding state property, or inexpediency of its implementation, holding of a bidding process on private partner designation and approval of bidding results on private partner designation should be made

as regards state property - by the central executive body, that performs the functions of managing the relevant state-owned facilities, if such body is not determined - by the Cabinet of Ministers of Ukraine.

as regards communal property - by the local self-governing body according to the powers provided by the Law of Ukraine «On the local self-governance»;

as regards property belonging to the Autonomous Republic of Crimea - by the body, authorized by the Council of Ministers of the Autonomous Republic of Crimea, if such body is not determined - by the Council of Ministers of the Autonomous Republic of Crimea.

The decision on the implementation of public-private partnership shall be made within three calendar months from the date of submission of public-private partnership implementation bids (by village, city, regional and district councils - during the nearest upcoming session) in the manner prescribed by this Law.

The body, which has decided the public-private partnership to be implemented or that such implementation will be inappropriate, shall communicate, within 15 calendar days from the date of the relevant decision, this decision to the entity having submitted proposals on public-private partnership implementation.

{article 13 according to the Law No 817-VIII as of 24.11.2015}

Chapter IV.

DESIGNATION OF THE PRIVATE PARTNER

Article 14. Designation of the private partner

1. A private partner to conclude a contract (contracts) under the public-private partnership shall be designated only on a competitive basis, except as provided by law.

If upon having announced the bidding on the private partner designation for the implementation of public-private partnership, only one bidder has applied to participate in the bidding, the relevant contract can be concluded by the authorized body with this bidder by agreeing

with its essential terms of the contract, unless otherwise provided by laws regulating relations arising from conclusion and execution of the contracts specified in paragraph one of Article 5 of this Law.

2. A procedure of the bidding on the private partner designation for the implementation of public-private partnership on property owned by the state or communities or the Autonomous Republic of Crimea (384-2011-P) shall be established by the Cabinet of Ministers of Ukraine.

If the laws of Ukraine regulating relations arising from conclusion of the contracts specified in paragraph one of Article 5 of this Law have established a different bidding procedure, the bidding procedure established by these laws shall apply.

{unnumbered paragraph 2 part 2 Article 14 amended according to the Law No 817-VIII as of 24.11.2015}

Article 15. Principles of the bidding on the private partner designation

1. When deciding on the bidding on the private partner designation for the implementation of public-private partnership, the following specifications shall be determined:

an implementation period of the public-private partnership, a mode of implementation and milestones;

a public partner and facilities subject to the public-private partnership

an amount and mode of financial participation by the public partner in the implementation of public-private partnership;

a deadline for applications for participation in the bidding;

a deadline for the bidding on the private partner designation;

basic qualification requirements to the bidders

basic criteria for identification of the winner.

2. Part 2 of Article 15 has been excluded.

{according to the Law No 817-VIII as of 24.11.2015}

3. An announcement of the bidding on the private partner designation shall be published by the public partner in the newspaper “Uriadovyi Kuryer” [ed. “Governmental Courier”] or “Holos Ukrainy [ed. “Voice of Ukraine”], or an official printed mass media outlet of the respective self-government body or the Autonomous Republic of Crimea, if these authorities are the public partner, and also shall be posted on the official website of the public partner.

Article 16. Publication of the results of the bidding on the private partner designation

1. The results of the competitive bid evaluation to designate a private partner for the implementation of public-private partnership shall not be subject to disclosure prior to the date of the bidding winner designation, except as prescribed by law.

2. The body, which has held the bidding, shall, within ten days from the date of the winner designation, publish information and substantiated explanation on the reasons for designating the winner and rejection of other bidders.

3. The disclosure of information referred to in paragraph two of this Article shall be made by its publication in the newspaper “Uriadovyi Kuryer” [ed. “Governmental Courier”] or “Holos Ukrainy” [ed. “Voice of Ukraine”] or an official printed mass media outlet of the respective self-government body or the Autonomous Republic of Crimea, if these authorities are the public partner, and also shall be posted on the official website of the public partner.

Article 17. Conclusion of the contract with the bidding winner under the public-private partnership

1. The body which decided on implementation of public-private partnership not later than in a month after signing of the protocol on the results of the bidding (village, city, regional and district councils - during the soonest upcoming session) is obliged to consider the results of the bidding and issue the relevant protocol (on designation of the winner of the bidding, on declining all the bids without designation of the winner, or on the announcing the bidding void) or to refuse to approve the bidding results explaining the reasons of this refusal.

{part 1 Article 17 has been supplemented with new paragraph 1 according to the Law No 817-VIII as of 24.11.2015. Thus paragraph 1 should be considered paragraph 2}

The conclusion of the contract under the public-private partnership shall be made by the body that, under Article 13 of this Law, has decided to implement the public-private partnership with the bidding winner under terms established by the bidding on the private partner designation.

2. If a number of entities as private partner parties has been determined the winner of the bidding on the private partner designation to implement the public-private partnership, the contract being concluded under the public-private partnership shall be signed by such entities or the entity they have authorized to sign the contract.

3. The public partner, in the manner prescribed by the Cabinet of Ministers of Ukraine, shall report about the conclusion of the contract within the public-private partnership to the central executive body that implements the public policy in the field of public-private partnership, authorized to account for contracts concluded under public-private partnership.

{unnumbered paragraph three of Article 17 as amended by Law No. 5463-VI (5463-17) as of 16.10.2012}

4. If a substantial change in circumstances, which the parties have been guided by in the conclusion of the contract under the public-private partnership, comes about, this contract may be modified, amended or terminated by mutual consent or through legal proceedings, unless otherwise has provided by the contract or follows from the nature of commitments.

5. Contract concluded under public-private partnership can be terminated upon agreement of the parties, and in the cases provided by the law or by the contract - in court.

{Article 17 has been supplemented with part 5 according to the Law No 817-VIII as of 24.11.2015}

6. Legal consequences of the change or termination of the contract concluded under public-private partnership are determined by the law and this contract.

{Article 17 has been supplemented with part 6 according to the Law No 817-VIII as of 24.11.2015}

7. A person who organizes for provides financing under public-private partnership may participate in the contract concluded under public-private partnership on the side of private partner.

If a private partner fails to satisfy its obligations according to the contract concluded under public-private partnership, the person who organizes for provides financing under public-private partnership may participate has the right to address public partner with the suggestion to change the private partner according to the contract concluded under public-private partnership, in the manner and according to the procedure determined by the Cabinet of Ministers of Ukraine.

{Article 17 has been supplemented with part 7 according to the Law No 817-VIII as of 24.11.2015}

Chapter V.

STATE SUPPORT, STATE GUARANTEES AND STATE CONTROL

Article 18. State support for the implementation of public-private partnership

1. The state support for the implementation of public-private partnerships can be provided:

by guarantees provided by the state or the Autonomous Republic of Crimea or self-government bodies;

through funding from the state or local budgets and other sources in accordance with nationwide and local programs;

through paying to a private partner other payments foreseen by the contract conducted under public-private partnership, specifically payment for readiness (accessibility) of the facilities of public-private partnership for the operations (use) etc.

{part 1 Article 18 has been supplemented with paragraph 4 according to the Law No 817-VIII as of 24.11.2015}

through purchase by a public partner of the certain scope of goods (works or services) that are produced (performed, provided) by a private partner according to the contract concluded under public-private partnership:

{part 1 Article 18 has been supplemented with paragraph 5 according to the Law No 817-VIII as of 24.11.2015}

through supplying to the private partner the goods (works, services) necessary for implementation of public-private partnership;

{part 1 Article 18 has been supplemented with paragraph 6 according to the Law No 817-VIII as of 24.11.2015. Thus paragraph 4 should be considered paragraph 7

in other forms prescribed by law.

2. A decision to grant state support for the implementation of public-private partnership is made depending on ownership of the facility of the public-private partnership by either the Cabinet of Ministers of Ukraine or an authorized executive body, or self-government bodies or the Council of Ministers of the Autonomous Republic of Crimea respectively in accordance with law.

3. A procedure for providing state support (No. 279-2011-P) is established by the Cabinet of Ministers of Ukraine.

4. State support foreseen by this article is provided without state registration of investment projects and project (investment) proposal, according to the Law of Ukraine «On Investment Activity»

{Article 18 has been supplemented with part 4 according to the Law No 817-VIII as of 24.11.2015}

Article 19. The legal regime for investment and foreign economic activities by the private partner

1. For foreign private partners implementing a public-private partnership in Ukraine, a national legal regime for investment and other economic activities shall be established, except as prescribed by law and international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine.

2. Disputes arising from the contracts concluded under public-private partnership with the participants of non-residents, enterprises with foreign investment are to be solved in the manner prescribed by the law, they may also be considered by international arbitration in the location defined in the contract.

{Article 19 has been supplemented with part 2 according to the Law No 817-VIII as of 24.11.2015}

3. If the contract under public-private partnership is conducted by the Cabinet of Ministers of Ukraine, at the request of the foreign private partner (partners) the state may reject the immunity in the contract concluded under public-private partnership. Such a refusal is done by the resolution of the Verkhovna Rada of Ukraine and extends to all the court resolutions, resolutions of foreign commercial arbitration, solution on claim provision and on execution of court and arbitration bodies decisions.

{Article 19 has been supplemented with part 3 according to the Law No 817-VIII as of 24.11.2015}

Article 20. Guarantees for private partners' rights

1. The state guarantees observation of the provisions, established by the legislation of Ukraine, for the purposes of the private partners' activities associated with the implementation of contracts concluded under the public-private partnership, and respect to rights and interests of private partners.

2. State agencies and self-government bodies and their officials have no right to interfere in the activities of private partners related to the public-private partnership, except as prescribed by law.

3. If prices (tariffs) for services of the private partner are subject to state regulation, the prices (tariffs) have to include funds for reimbursement of the value of investments (investment component) made by the private partner, unless otherwise provided by the contract concluded within the framework of the public-private partnership.

The size of the investment component shall have to ensure reimbursement during the period of the private partner's expenditure contract for investment activities.

If prices (tariffs) for services provided in the implementation of public-private partnership have been established at a level lower than economically justified costs for their production (supply), the private partner, if this is provided by the contract concluded under public-private partnership, may reject the contract or to stop it, if other is not provided by the law, refuse to perform investment obligations until the economically feasible prices (tariffs) are set and/or prices (tariffs) are included into investment and/or profit constituent, or until including suggested by private partner amendments to the contract concluded under public-private partnership on the scope and terms of investments into the facility of public-private partnership.

{part 3 Article 20 as amended by the Law No 817-VIII as of 24.11.2015}

4. The rights and obligations of the parties stipulated by the contract concluded under the public-private partnership shall be regulated for the period of the contract by the legislation of Ukraine, which was in force at the date of the conclusion of the contract. These guarantees shall cover amendments in the civil and economic legislation governing property rights and obligations of the parties, and shall not cover amendments in the law on defense, national security, public order, environmental protection, quality standards for goods (works, services), tax, currency and customs legislation, legislation on licensing and other legislation governing the relations in which there are no principles of equality of parties (between public and private partners).

5. Should state or self-government bodies make decisions that violate the rights of private partners, the damage caused to them as a result of such decisions shall be reimbursed in full.

Private partners shall be entitled to reimbursement of damages as a result of actions, inaction or improper execution of obligations, prescribed by law of Ukraine, by state or self-government bodies and their officials in accordance with the laws of Ukraine.

6. If the contract concluded under public-private partnership is terminated due to public partner's violation of its obligations set up by the contract, a public partner reimburse a private partner all investment that hasn't been repaid during contract term as well as the damage caused by pre-term termination of the contract.

The procedure and method of calculation of the reimbursement and damage, as well as the term of the payment are to be set in the contract concluded under public-private partnership.

{Article 20 has been supplemented with part 6 as according to the Law No 817-VIII as of 24.11.2015}

7. Guarantees of private partners' rights mentioned in this Article are to be applied to all forms of public-private partnership provided by this Law and other laws regulating relevant form of public-private partnership.

{Article 20 has been supplemented with part 7 according to the Law No817-VIII as of 24.11.2015}

Article 21. State control over the implementation of the contracts concluded under the public-private partnership

1. The control over the implementation of the contracts concluded under the public-private partnership shall be executed by the central executive body authorized by the Cabinet of Ministers of Ukraine, other state and self-government bodies and their officials in accordance with their powers in the manner prescribed by law.

{part 1 Article 21 amended according to the Law No 817-VIII as of 24.11.2015}

2. Private partners shall provide relevant information on the execution of the contract, concluded under the public-private partnership, to public partners in the manner (No. 81-2011-P) and in accordance with the form approved by the Cabinet of Ministers of Ukraine.

Article 22. Powers of the central executive body that implements the state policy in the field of public-private partnership

{Name of Article 22 as amended by Law No. 5463-VI (5463-17) as of 16.10.2012}

1. The powers of the central executive body that implements the state policy in the field of public-private partnerships are: {Unnumbered paragraph one of Article 22 as amended by Law No. 5463-VI (5463-17) as of 16.10.2012}

arrangement of checking of the execution of the contracts concluded under the public-private partnership;

preparation of proposals to ensure the state policy on public-private partnership is developed and implemented; {Unnumbered paragraph three of Article 22 of Law No. 5463-VI (5463-17) as of 16.10.2012}

monitoring the performance of the executive and self-government bodies in the field of public-private partnerships;

development of the concept and drafts of the national target programs for promoting public-private partnership, adoption of measures on their implementation;

promoting the protection of the legitimate rights and interests of public and private partners in the implementation of public-private partnership;

promoting the pre-trial settlement of disputes between public and private partners;

paragraph 7 part 1 Article 22 has been excluded

{according to the Law No 817-VIII as of 24.11.2015}

monitoring, summarizing and publicizing, in the prescribed manner, the results of the implementation of public-private partnership, including the evaluation and monitoring of the overall level of the public partner's risks in the contracts concluded within the framework of the public-private partnership;

monitoring the observation of legislation on the public-private partnership, including within the bidding on the private partner designation;

executing, within its authority, public awareness and advisory work;

participating in the organization of training and advanced training for specialists in the field of public-private partnership;

accounting the contracts concluded within the framework of the public-private partnership;

paragraph 7 part 1 Article 22 has been excluded

{according to the Law No 817-VIII as of 24.11.2015}

executing other powers prescribed by law.

Chapter VI

FINAL AND TRANSITIONAL PROVISIONS

1. This Act shall take effect three months after its publication.

2. The following legislative acts of Ukraine shall be amended:

1) In the Land Code of Ukraine (No. 2768-14) (the Journal of the Verkhovna Rada of Ukraine, 2002, No. 3-4, Article 27):

paragraph six of Article 102-1 shall be supplemented with sub-paragraph 5 as follows:

“5) termination of the contract concluded under the public-private partnership (as regards contracts on perpetual lease and superficies concluded within the framework of such partnership)”;

paragraph two of Article 134 after unnumbered paragraph ten shall be supplemented with a new unnumbered paragraph as follows:

“Provision of land lots owned by the state or communities for the purposes of the private partner within the framework of the public-private partnership in accordance with the law”

In this regard, paragraphs eleven – nineteen shall be considered paragraphs twelve– twenty;

Sub-paragraph 2 of paragraph 2 of Chapter VI has been invalidated under Law No. 5007-VI (5007-17) as of 21.06.2012}

3) In the Law of Ukraine “On Local Self-Government in Ukraine” (280/97-VR) (the Journal of the Verkhovna Rada of Ukraine, 1997, No 24, article 170 with subsequent amendments):

in sub-paragraph 2 of paragraph “a” of Article 28, the words “provided by municipal enterprises and organizations of the respective territorial community; agreeing these issues, in the prescribed manner, with enterprises, institutions and organizations, which are not owned by communities” shall be deleted;

paragraph one of Article 43 shall be supplemented with sub-paragraph 37 as follows:

“37) prescribing tariffs for housing services provided by companies jointly owned by local communities, interests of which are represented by the appropriate district or regional council, as well as by the entities that administer (operate) integral property complexes of such enterprises”;

4) Sub-paragraph 7 of paragraph one of Article 18 of the Law of Ukraine “On the Local State Administrations” (No. 586-14) (the Journal of the Verkhovna Rada of Ukraine, 1999, No. 20-21, Article 190) shall be amended as follows:

“7) determines and establishes rates of consumption of housing and communal services, monitors their satisfaction”;

5) In the Law of Ukraine “On Concessions” (No. 997-14) (the Journal of the Verkhovna Rada of Ukraine, 1999, No. 41, article 372 with subsequent amendments):

unnumbered paragraph 4 of Article 1 shall be supplemented with the following sentence, “A number of entities may be concessionaire parties”;

in Article 3:

in paragraph two:

unnumbered paragraph 2 shall be supplemented with the words “ensuring that the irrigation and drainage systems operate”;

unnumbered paragraph 4 shall be supplemented with the words “waste treatment”;

unnumbered paragraph 5 shall be read as follows:

“Prospecting, exploration of mineral deposits and their extraction”;

unnumbered paragraphs 7-9 and 13 shall be read as follows:

“Construction and / or operation of railways, airports, runways at airports, bridges, road overpasses, tunnels and other means of communication, subways, sea and river ports and their infrastructure;

Machine-building industry;

Health care”;

“Production, transmission and supply of heating energy and distribution and supply of natural gas”;

paragraph 4 shall be supplemented with a new paragraph as follows:

“5. The property of enterprises, which is an integral property complex or system of integral property complexes, being given in the concession, shall be understood as assets (fixed assets, including construction in progress, intangible assets), which ensures manufacturing (creation) of the products (services) in the areas outlined in paragraphs two and three of this article.

Other fixed assets, current assets, funds, other securities and assets, that do not meet the requirements, set out in unnumbered paragraph one of this paragraph, and property rights and

liabilities, which belong to the holder of assets, being provided in the concession are not the property of the concession.

Fixed assets, current assets can be redeemed by the concessionaire under conditions established by the terms of the contract. Receivables and payables, cash and securities can be transferred to the concessionaire under terms established by the contract.

The conditions and procedure for transfer of current assets, payables and receivables, cash and securities to the concessionaire may be included in the terms of the concession bidding.

The legal continuity of rights and liabilities of the company, the integral property complex of which is being given in the concession, does not apply to the concessionaire. The conditions and procedure for assignment of rights and liabilities of the company, the integral property complex of which is being given in the concession, to the concessionaire can be established by the terms of the bidding.

If all assets and liabilities of the company, the integral property complex of which is being given in the concession, have been signed off to the concessionaire, this company shall be subject to termination by liquidation.

The property, which is a part of the integral property complex having been given in the concession, shall be signed off to the concessionaire, specifying that such property is in the concession.”

In connection with the above, paragraphs 5-7 shall be considered paragraphs 6-8;

Paragraph 2 of Article 7 after unnumbered paragraph 10 shall be supplemented with a new unnumbered paragraph as follows:

“Acts as a customer and performs activities related to the approval and adoption of land management projects on land allocation, other land management documentation being developed to provide a land lot on lease to the concessionaire to implement the concession.”

In this connection, paragraphs 11 and 12 shall be considered 12 and 13;

in Article 8:

the title shall be supplemented with the word “and its results”;

Unnumbered paragraph 9 of paragraph 3, after the words “also submits”, shall be supplemented with the words “information about the land lot having been provided to the concessionaire to execute concession activities (the cadastral number, purpose, restrictions, land lot encumbrances, information about water, heat, gas supply, sewage and other utility lines on the land lot);

paragraph five shall be supplemented with a new paragraph as follows:

“6. The results of the bidding, the rationale for determining the winner and rejection of other bidders shall be posted on the official website of the concessor, immediately after the announcement of the award decision and, within ten days from this date, shall be published in the newspaper “Uriadovyi Kuryer” (ed. – “Governmental Courier”) or “Holos Ukrainy” (ed. – “Voice of Ukraine”) or in a printed mass media outlet of the respective self-government body.

A contract shall be concluded with the winning bidder within three months from the date of publication of the results of the concession bidding in the manner and on the terms specified in this Law. At the written request of the bidder, this period may be extended.”

In this regard, paragraph 6 shall be considered paragraph 7;

Paragraph 3 of Article 10 shall be read as follows:

“3. If the implementation of the concession requires a land lot, the lease of such land lot shall be concluded in accordance with the law”;

in Article 12:

paragraph 1 after unnumbered paragraph 1 shall be supplemented with three new paragraphs as follows:

“If during the term of the concession contract some assets provided to the concessionaire as part of the concession are decommissioned due to their write-offs resulting in such assets not being used in the concessionaire’s business activities, there shall be held a readjustment of the concession payment by reducing the concession fee calculation base by such asset value, having been determined on the day of submission them into the concession.

Concession fees shall be increased in the case of providing by the concessor new facilities created at the expense of the local or state budgets into management (operation) of the concessionaire during the term of the concession contract.

If management (operation) rights for state-owned or municipal assets, existing on the date of the concession contract conclusion, are provided in the concession, the concessionaire shall be exempt from concession fees for new fixed and intangible assets created (acquired) by the concessionaire at its expense for the execution of the concession contract provisions.”

In this regard, paragraph 2 shall be considered paragraph 5;

The first sentence of paragraph 4 shall be read as follows:

“4 The concessor may provide benefits as for concession fees, including those in the form of deferred payments, respite, full or partial exemption from payment of concession fees for a specified period and establish in the contract that subsidies, reimbursement and benefits may be provided for concessionaires of unprofitable and low-profit concession facilities that are of great social importance”;

in Article 18:

paragraph two shall be supplemented with unnumbered paragraph seven as follows:

“To conclude land leases not later than one year from the effective date of the concession contract. At the written request of the private partner, this period may be extended, but not more than one year”;

paragraph two shall be supplemented with unnumbered paragraph four as follows:

“4. If, in the concession contract, several entities are concessionaire parties, they shall bear liability in solidum for the obligations stipulated in the terms of the concession contract”;

Unnumbered paragraph one of paragraph three of Article 20 shall be supplemented with four unnumbered paragraphs as follows:

“3. Depreciation shall be charged on the facility under concession by the conessor or the body it has authorized. The amount of depreciation shall be reported to the concessionaire quarterly within the period prescribed by the concession contract. The amount of the concession fee payable by the concessionaire for the respective period shall be reduced by the amount of depreciation (which cannot be more than the amount of the concession fee).

The concessionaire shall be responsible for carrying out works to improve the facility under concession, agreed with the conessor, in the manner and within the time limit set by the concession contract at the expense of the depreciation amount, which the concession fee amount has been reduced by.

If such funds are used inappropriately, penalties shall be applicable to the concessionaire in the amount of 100 percent of the amounts used inappropriately, with a delay interest in the amount of 120 percent of the refinancing rate of the National Bank of Ukraine.

The depreciation deductibles accrued on the property owned by the concessionaire shall be used by the concessionaire in accordance with the laws of Ukraine.”

In this regard, unnumbered paragraphs second - four shall be considered unnumbered paragraphs five-seven;

6) paragraph one of Article 31 of the Law of Ukraine “On Land Lease” (No. 161-14) (The Journal of the Verkhovna Rada of Ukraine, 2004, No. 10, p. 102; 2008, No. 48, p. 358; 2010, No. 5, p. 40) shall be supplemented with paragraph nine as follows:

“Termination of the contract concluded within the framework of the public-private partnership (on land lot lease contracts concluded within the partnership)”;

7) paragraph five of Article 31 of the Law of Ukraine “On Housing Services” (No. 1875-15) (The Journal of the Verkhovna Rada of Ukraine, 2004, No. 47, p. 514) after the word “city” shall be supplemented with the words “district, regional”.

3. The Cabinet of Ministers of Ukraine, within three months from the date of enactment of this Law, shall

bring its regulations into conformity with this Law;

designate a central executive body to exercise the powers specified in Article 22 of this Law;

adopt regulations defined by this Law.

President of Ukraine

Viktor Yanukovych

Kyiv, July 1, 2010

No. 2404-VI