**Finishing** **the construction of** **the parking
(infrastructure of Terminal D at SOE Boryspil International Airport)**

**Preparation of documents for the contract:**

1. Business plan on joint activities for investments in land improvement and securing the provision of economic activities – basic public document for the joint activities (JA) plan implementation (joint activity – Articles 1130-1143 of Chapter 77 of the Civil Code of Ukraine).

Under the contract of partnership parties (participants) commit to pool their contributions and co-operate for profit or to achieve other goals. Thus, contributed assets, to which each participant had the right of ownership before, and products and incomes from the joint activities are common shared property of all participants, unless otherwise stated in the contract or legal acts. Other contributed assets, which each participant owned on grounds other than ownership, are used for the benefit of all members and is their shared property. In the process of joint activities, it is possible to conclude individual transactions (including investment agreements, contracts, etc.) between members and with third parties.

1. Negotiations on the terms of the draft contract involving all stakeholders. Today, there is no consensus on the need for selection of potential investors on a competitive basis, which can complicate the process of selection of the investor. However, selecting the investor on a competitive basis will ensure transparency of the process for a wide range of applicants and facilitate the conclusion of the contract on the most favourable terms.

The contract should include detailed terms for:

* participants;
* scope of the contract;
* the contributions of its participants *(*according to p. 1, Art. 1133 of Civil Code of Ukraine *participant’s contribution is considered to be everything that he brings to the joint venture (joint property), including cash, other property, professional and other knowledge, skills, business reputation and business relationships);*
* determine the status of the property, which is contributed by each participant (common share ownership);
* determine that private investor will maintain joint activities of the participants;
* *determine the form and manner of conducting control of joint activities;*
* establish the duration of joint activities *(preferably this period should be calculated based on the payback period of the project);*
* define the procedures for reimbursement of costs and losses associated with the joint activity of participants;
* determine the order of distribution of profits among the participants;
* establish a clear mechanism of ownership of real property to be created (the construction of which will be completed) by the state enterprise (or other asset holder).
* clearly define property guarantees of participants in the event of early termination of the contract;
* determine the procedure for termination of the contract and introduction of amendments to it.
1. Conducting an inventory check and assessment of property that will be transferred to Boryspil International Airport as a contribution under the contract. Evaluation of the contribution by other party (other than cash contribution).

Review of the valuation report of the state property is better to be done by Ukrainian State Property Fund guided by *Article* *7 of the Law of Ukraine "On the assessment of property, property rights and professional valuation activities in Ukraine", which specifies that the valuation is mandatory in the case of selection or determination of the share in the common property, the state has a share.*

1. An entity that revealed the intention to conclude the contract, gives the central executive authority, in whose jurisdiction it operates, an application to approve the conclusion of the **contract** together with the following documents:
* preliminary draft contract agreed by the parties (participants);
* certified copies of statutes of all parties that are expected to sign the contract;
* information on State Owned Enterprise (SOE) (production capacity, volume and basic product assortment, including export, number of personnel; level of returns for the last three years, accounts receivable and payable, including overdue; state registration of property rights or rights of use of buildings (structures) and land that are expected to be contributed under the contract; status of the property to be contributed under the contract, mortgage, tax pledge, lease).
* business plan with defined stages, terms, ways and means of execution of the contract, sources of financing, impact of the results of the contract on the financial plan for the entity;
* information on party (ies) with which the contract is expected to b signed (full name, state registration information confirming the ability of the parte (ies) to ensure the proper performance of its contractual obligations, including financial and professional capacity;
* valuation report on the property to be contributed under the agreement with the summary of its value determined on the basis of independent expert assessment using the assessment base, which corresponds to market value.
* valuation report shall be submitted together with a review that includes positive opinion on its compliance with the laws and regulations or in case of presence of minor deficiencies, an opinion that they did not affect the reliability the valuation and are in general compliance with laws and regulations;
* justification of usage of state property with relevant calculations.

The procedure is governed, in addition to legislation, by the Rule on concluding agreements on joint activities, commission, agency and property management by SOEs, institutions, organisations, and commercial companies, where share of the state in equity exceeds 50 percent, which was approved by the Resolution No. 296 of the Cabinet of Ministers on 11 April 2012.

1. Approving the draft resolution of Cabinet Ministers Ukraine on the contract on joint activity with the Ministry of Economic Development, Ministry of Finance, State Property Fund, and Ministry of Justice.

In addition to the draft resolution of the Cabinet of Ministers of Ukraine the governing body includes the application of the participant and nod through draft contract.

1. **Contributions by the parties under the contract.** When concluding the contract on joint activities it is necessary to make contributions and register them with the tax authority, and pay required taxes, e.g. VAT, (this issue requires further study).

It is important that January 1, 2015 Tax Code does not establish a special procedure for taxation of joint activity in Ukraine without establishing a legal entity. At present joint activity contracts are not separate profit tax payers (see. Letter of the State Fiscal Service of Ukraine from 29.07.2015 №27555 / 7 / 99-99-15-02-01-17.

1. **Implementation of the contract.** *Staged implementation of all activities according to the contract.* *Clear accounting of contributions from participants of joint activity.*
2. **Termination**

*Part 2 of Art.* *1141 of Civil Code*

"2. In the event of termination of the partnership, assets transferred to joint ownership and (or) use by the participants are returned to the respective participants, without compensation, unless provided otherwise. The division of property that is jointly owned by the participants, and joint claims arising from them, are carried out in the manner established by this Code. Member who introduced to the joint ownership an asset with individual characteristics, has the right in case of termination of the partnership to demand in court the return of the asset on conditions that interests of other members and creditors are accounted for."

Conclusion of the contract is the basis of common share ownership of the property contributed to joint activity (in this case - the object under construction) and created as a result of economic activity. Since the Civil Code of Ukraine does not establish a mandatory procedure for determining the size of shares of parties in the joint ownership, such size must be set by mutual agreement among the parties, and in case of dispute - taking into account the size of the contribution of each of the participants in joint activities.

According to p. 2, Art. 1141 the division of assets that are jointly owned by the participants, and joint legal claims arising from them, are carried out in the manner established by this Code. After the construction of the facility, participants will receive part of the ownership structure (pursuant to the contract and real contributions to construction).

1. Options for settlements of shared property:
* Sale by the state of its share in the shared property (assets under construction transferred under the contract) after signing the joint activity contract.

Private party may offer to buy a share in the property, given the need to attract credit funds and the reluctance of banks to open a credit line given the state share in the property to be mortgaged.

Private party (investor) will have a preferential right to purchase the state's share in the shared property in the event of its sale to a third party (appropriate to be fixed in the contract). Sale of the share in the property will result in withdrawal of the state from the contract. The contract itself may be extended if new (non-governmental) party emerges.

* Termination of the contract and compensation for the state share in the partnership agreement (in case of failure to sell the state's stake).

In the event when a participant exits the partnership agreement, other participants have to pay an appropriate compensation for his share in the shared property (in case of inability to discharge the property in kind). Provided that in this case there will be only two participants, the exit of the state/investor will result in the termination of the contract. Taking into account the investor's interest in preserving the integrity of the object, the compensation for the share of the state is preferred to be carried out in cash.

* The conclusion of the joint venture agreement, which provides the ability to clearly define the compensation value of the state’s contribution (value of construction in progress) in another (non-cash) form.

Depending on which contributions will be made by each participant, one of the options could be to provide a part of newly created parking spaces to the SOE and gradual compensation of the state’s contribution over specified time period.