

INVESTING IN UKRAINE: PPP LEGAL FRAMEWORK





WHAT IS PUBLIC PRIVATE PARTNERSHIP



PUBLIC PRIVATE PARTNERSHIP (“PPP”)



one of the **key rebuilding mechanisms**



long-term relations (5-50 years)



agreement-based cooperation between a **public authority** and a **private partner**, where the private partner invests in the project and assumes the associated implementation risks



may be implemented through **concession, joint activity, management, other agreement** (e.g., investment agreement)



regulations are expected to be reworked in 2024 to enable the world’s **quickest private partner selection and the implementation of e-tendering**

CONCESSIONAIRE SELECTION

Tender

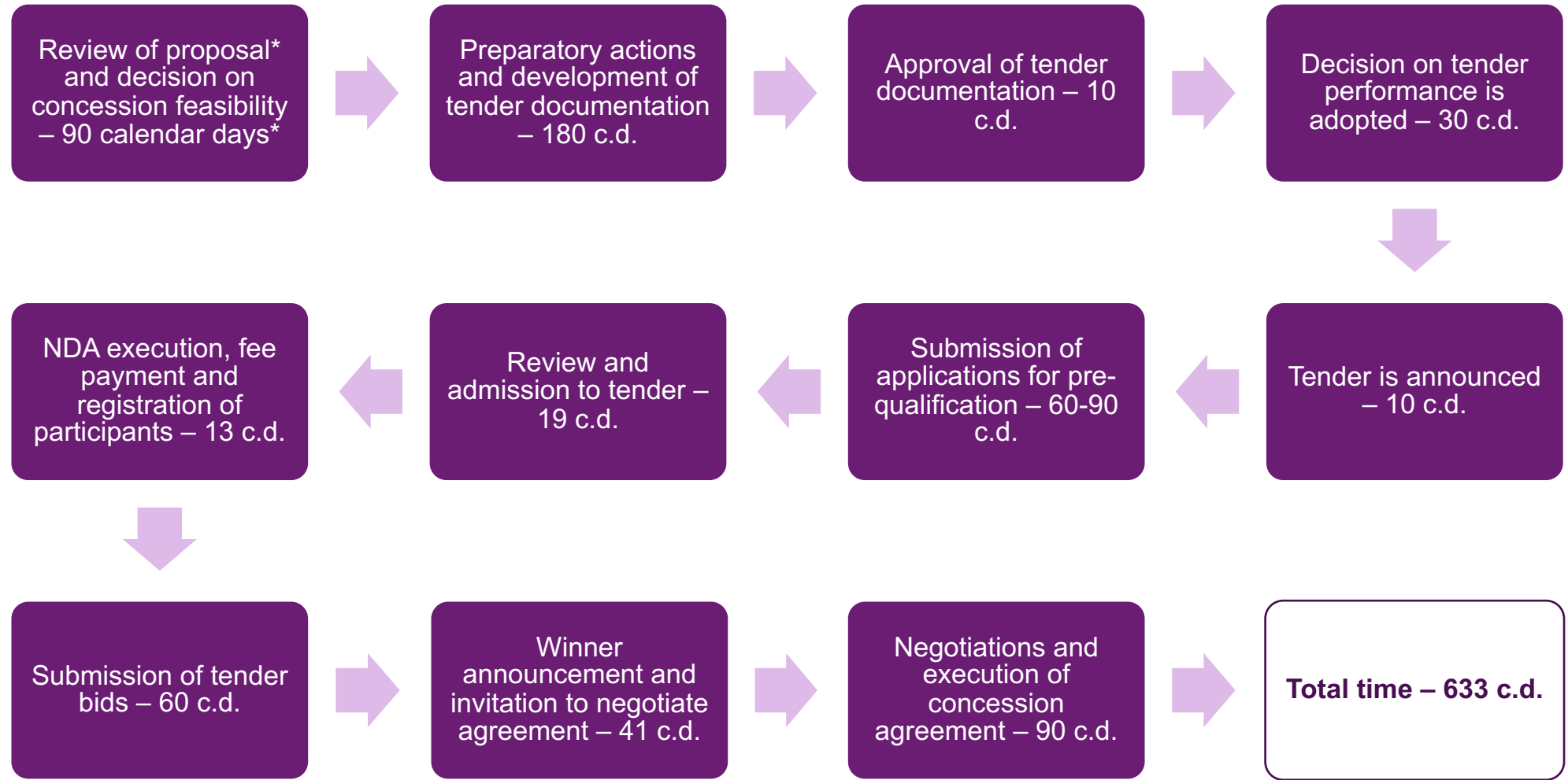
- **standard** procedure
- **4 stages**
- registration fee is capped at 100 minimal salaries (approx. **USD20,000**)
- total approx. time – **633 c.d.**

Competitive dialogue

- applied when the state partner **cannot determine** the technical requirements of the project or potential solutions the private partner may offer
- the state partner determines the project's characteristics through **pre-negotiations** with potential private partners
- total approx. time – **633 c.d.** (excluding negotiations)

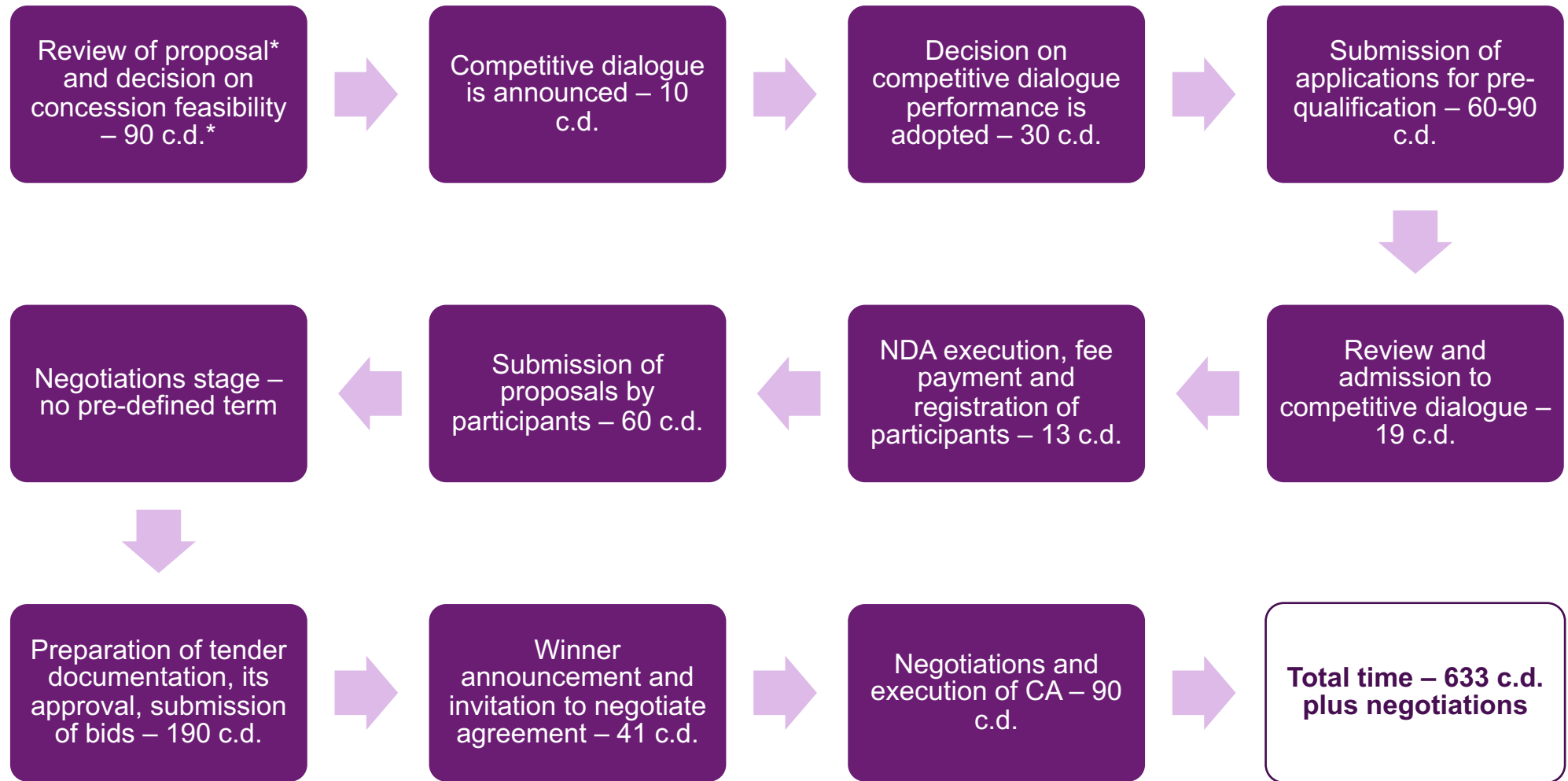


CONCESSIONS – TENDER



* - there is no time cap for proposal and feasibility study preparation

CONCESSIONS – COMPETITIVE DIALOGUE



* - there is no time cap for proposal and feasibility study preparation

KEY AUTHORITIES



Ministry of Economy

- central state authority responsible for implementation of PPP policy and approval of PPP projects



**Ministry for Communities, Territories and Infrastructure Development of Ukraine
(Ministry for Restoration)**

- manages most of the assets planned for PPP in Ukraine
- will act as a state partner for private partners during seaports and roads concessions



PPP Agency

- assists the state and local authorities with implementation of PPP projects



LAND AND CONSTRUCTION



LAND



authorities entitled to dispose of land plots are **obliged** to transfer the required land plots to the concessionaire for their use



concessioner may unilaterally terminate concession agreement if does not obtain the land plots into use within **one year** from the agreement's execution

CONSTRUCTION



state/local community is **obliged** to develop the **town planning documentation** for the project implementation



in case of roads construction, concessionaire executes a delegation agreement, under which it receives **the right to construct** the road **without obtaining rights to land plots directly**

↘ STATE SUPPORT AND GUARANTEES (1/2)

- ↗ any unfavorable changes of legislation do not apply to private partner (***stabilisation clause***)
- ↗ possibility to enter into **direct agreements** with **step-in rights**
- ↗ free choice of **applicable law**
- ↗ free choice of **dispute resolution mechanism**
- ↗ **sovereign immunity waiver**



STATE SUPPORT AND GUARANTEES (2/2)

- ↗ state / local community may provide **additional support** to private partner, namely:
 - availability payments
 - purchase of goods/services produced by private partner
 - procurement of goods/services to private partner
 - construction of adjacent infrastructure required for PPP performance
- ↗ while **minimum revenue guarantee** is not determined as a separate support instrument, it may be covered by **purchase of certain share of goods/services by the state partner**





OLVIA & KHERSON



two **pilot concession projects** conducted with support from **EBRD and IFC**



Olvia seaport: QTerminals, investment of USD88 mln within first 5 years



Kherson seaport: Risoil-Kherson, investment of USD8 mln within the first 4 years

PLANNED CONCESSIONS



work on preparation of Chornomorsk seaport concession **was resumed in 2023** with support from **EBRD and IFC** – tender details to be announced on **URC 2024 in Berlin**



several feasibility studies were developed in 2020-2021 and may potentially be resumed in the future, including concessions of **six highway segments** and the **Odesa and Berdiansk seaports**



DRAFT LAW No. 7508 (1/2)



Overhaul of PPP legal framework for rebuilding

- adopted in the **first reading** in October 2022
- **150+ pages** of amendments
- currently reviewed by the **European Commission** and **foreign partners**
- expected to be adopted in the **second half of 2024**



General changes

- **electronic PPP tenders**
- **standard tender documentation**, standard **PPP agreement**
- new areas where PPP may be applied, including **residential real estate construction**
- feasibility study may not be prepared for projects with value **less than EUR5,382,000**



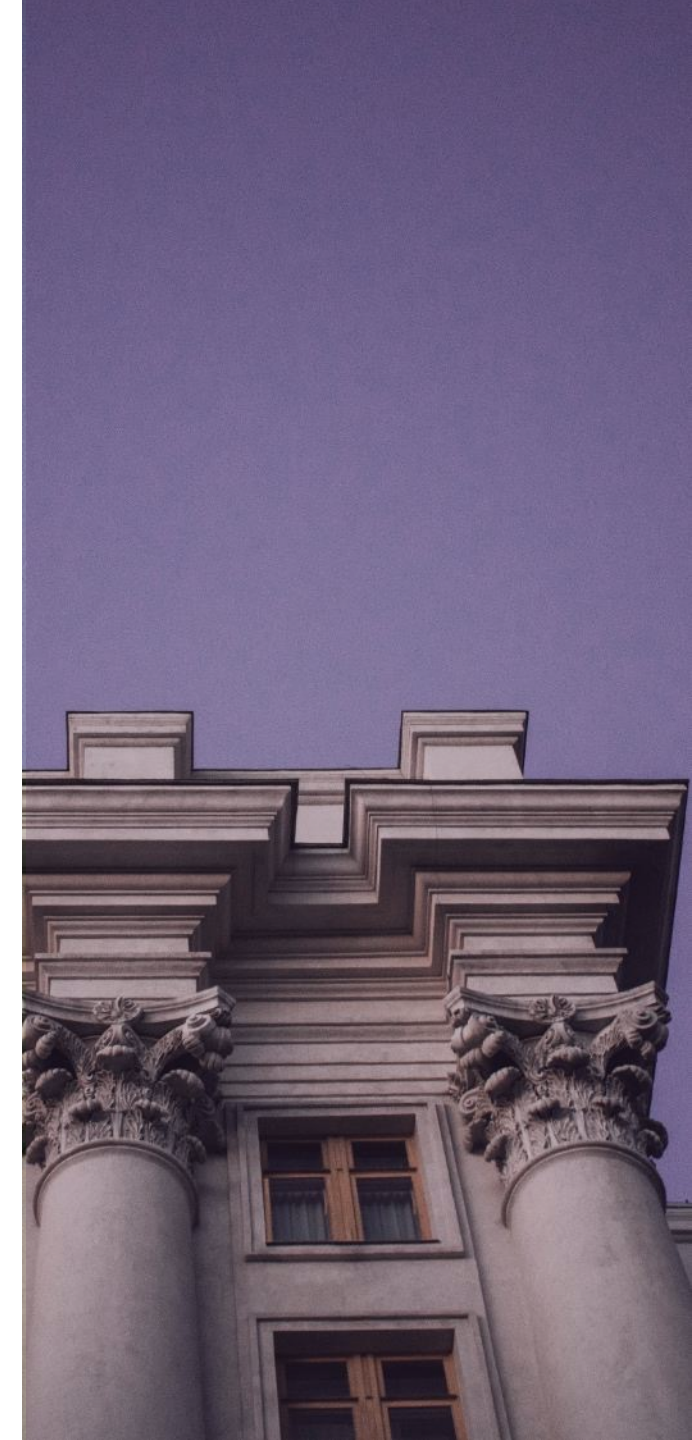


DRAFT LAW No. 7508 (2/2)



New procedure for rebuilding PPP projects

- a separate list of PPP projects on rebuilding will be formed (“**Rebuilding PPP Projects**”)
- the development of a feasibility study **will not be required** for Rebuilding PPP Projects (usually takes **8-12 months**)
- special commissions will organise the tenders or Rebuilding PPP Projects and act as **a single point of contact** for the investors
- **pooling** of Rebuilding PPP Projects and **shortlisting** of qualified potential private partners will be introduced to facilitate selection of private partners
- the **application of foreign law** to any other agreements related to the PPP project will be **explicitly allowed** (e.g., financing or direct agreements)
- **waiver of sovereign immunity** under **direct agreements** will be explicitly permitted



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