

United Nations Economic Commission for Europe

National PPP Readiness Assessment Report

Moldova



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**UNECE International PPP
Centre of Excellence**

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Readiness Assessment Report**

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1. Introduction

The world is facing an increasing demand for infrastructure. The rapid growth of the world's population, the urgent need to make further progress in achieving the UN's Millennium Development Goals, and the need to mitigate the effects of climate change, are coming together and overstressing every government's budget many times over. Pressing areas of need range from water and sanitation, waste management, hospitals and health care, schools to roads, green energy and many more. Estimates by the OECD put the figure at 35 billion USD for new infrastructure and 45 billion USD for the mitigation of climate change affects in countries with emerging economies alone. It is not a discussion of why, the problem is how to find funding to meet these enormous needs.



The traditional approach of governments is either to use the state's own budget or privatisation. The first is by far insufficient to meet the needs while the latter only works in a sound legal and financial framework. There is though a third way in undertaking this task. Governments are focusing their attention on the role of the private sector to help – with emphasis on HELP - but in a distinct new form, namely Public-Private Partnerships (PPPs). The role of Public-Private Partnerships (PPPs) is of critical importance.

PPPs can be defined: *as innovative, long-term, contractual arrangements for developing infrastructure and providing public services by introducing private sector funds, sound risk allocation, expertise and motivation but not taking over the responsibilities into areas that are traditionally done by the government*¹.

The number of PPP projects worldwide has increased exponentially over the past decade or so, and there are over 4500 successful projects in the world today. However, unfortunately, there are only a few PPP projects that are successfully operating in developing countries and transition economies. Although CIS countries are beginning to look at PPPs as a means to addressing their infrastructure challenges, for most of these countries PPP is a totally new concept and a model where there is no living memory of, and substantial capacity-building and training will be required in order to deliver successful projects.

Considering Moldova's current status of a transitional economy aspiring to join the European Union and attain its standards in terms of economic integration, PPP has the potential of opening up a new way of participative development for the society as a whole. This implies a common understanding and agreement upon priorities and a clear vision to support the effective implementation of PPP models in the country.

In order to build up Moldova's image as an attractive market to foreign investors it is very important to work and formulate the infrastructure needs and strategies, realistically, according to its geographical position and current capacity, while taking into account the balance between projects with the highest socio-economic needs and those projects most appropriate for PPP financing.

¹ UNECE Guidebook on Good Governance on PPPs

1.1 Moldova's vision

Infrastructure is the basis for a sustainable and inclusive economic growth that creates more jobs and reduces poverty. This is a widely shared vision in Moldova, and is articulated in the National Development Strategy "Moldova 2020", which specifically describes a vision of cohesive long-term sustainable economic growth based on a diagnostic study of constraints to growth.

One of its key strategies in achieving this is through the development of a PPP programme. As part of the administrative decentralization process based on delegation of powers and responsibilities between authorities, PPP is one of the main principles which involves ensuring real opportunities for cooperation between the public, private and civil society. From transportation to water and energy systems, Moldova needs investment and innovation to develop a more sustainable framework to reduce its reliance on fossil fuels, create capacity for economic growth, and make better use of its natural resources.

In order to achieve its vision, Moldova needs a world-class infrastructure benchmark against globally competitive economies. This means, among other things:

- a diversified energy system.
- an efficient transportation network;
- modern health and education systems;
- an efficient water and sewage system; and
- a productive agriculture system with supply chain agro-food processing.

An adequate business enabling environment and the use of the PPP model to procure infrastructure projects are critical in upgrading these sectors to meet global standards.

The lack of infrastructure has been internationally recognised as a bottleneck to economic growth in any economy, and PPPs are a means to fulfil the vision and priorities for the nation's infrastructure needs by setting goals to align departmental policies, ensure best value from government spending, reduce duplication, and show how investments can reinforce one another. The PPP model has in-built mechanisms that avoid the enormous time delays and costs overruns in delivering major projects, and set the context within which decisions are taken at the state and local levels with a high degree of confidence.

1.2 Capability Gap

The vast majority of countries with economies in transition and developing countries in the UNECE region and beyond that are at the initial stages of developing national infrastructure investment strategies, including PPPs, need to improve their understanding, knowledge, capability, skills, and establish efficient processes that would allow them to properly develop and deliver their PPP action plans. The UNECE recognised this capability gap and thus embarked on the development of a PPP Toolkit for capacity building, including a National PPP Readiness Assessment, in order to help countries to develop their PPP strategies according to best international practice, so that they successfully deliver much needed infrastructure on a large scale and co-ordinated basis, for the good of the citizen and at a cost that represents value for money.

1.3 The UNECE national PPP readiness assessment in Moldova

In addressing this capability gap in Moldova, the UNECE, through its Team of Specialists on PPP and the International PPP Centre of Excellence, and in cooperation with the Public Property Agency within the Ministry of Economy, where the PPP Unit is positioned, held a series of meetings with key stakeholders involved in furthering PPP development in Moldova (including lead and line ministries, financial institutions, private businesses and representatives of intergovernmental organisations). The UNECE Team was accompanied by the Head of the PPP Unit for all of the meetings. The knowledge acquired from these meetings, together with the replies to the pre-visit questionnaire helped to formulate a number of recommendations contained in this document.

The programme of meetings in Moldova took place from 24 to 28 October 2011, and it was specifically designed to engage all of the major stakeholders in Moldova who are involved with infrastructure development, both in the public and private sectors, as well as major international organisations. Most of the meetings with line ministries were at the level of Ministers or Deputy Ministers, while those with the banking

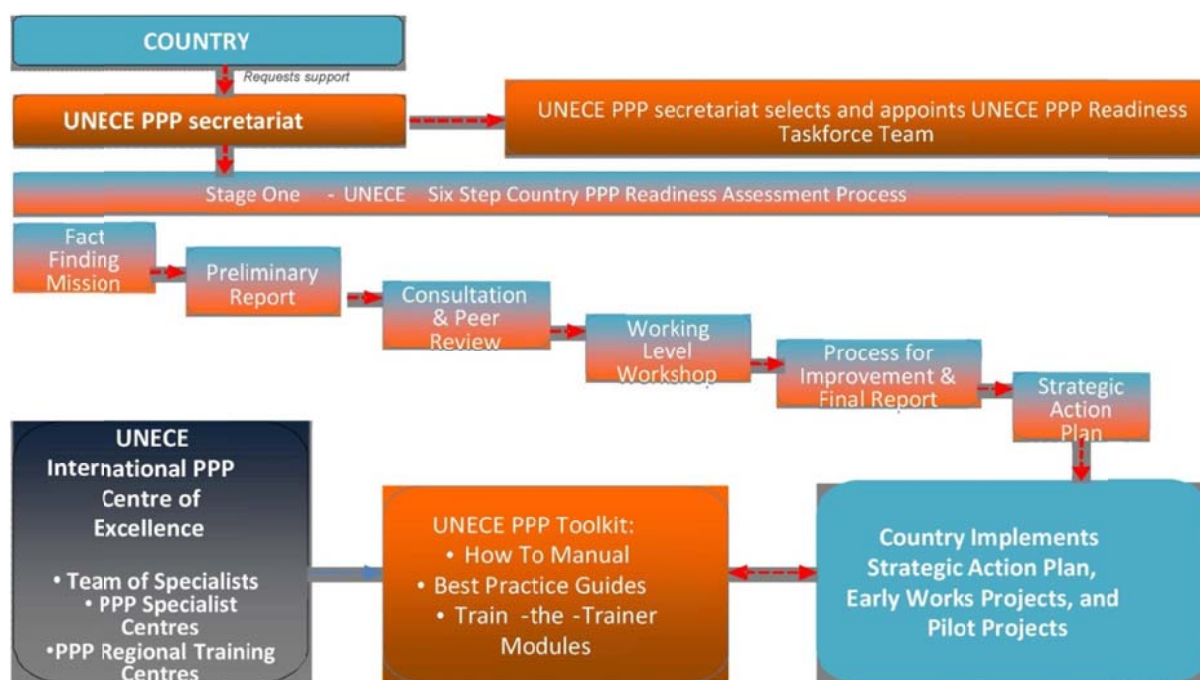
community and private businesses were at the level of senior executives. The consultations with the various stakeholders were informal in nature, and the information/insight obtained from these meetings alongside the replies to the pre-visit questionnaire provided the basis for the readiness assessment report and the recommendations below.

UNECE national PPP readiness assessment

The purpose of meetings with stakeholders is to:

- make a thorough examination of the enabling environment and identify challenges that may face a country in its aim to attract private capital for infrastructure development;
- consider areas where potential pilot projects are needed and feasible; and
- formulate an Action Plan to develop PPPs in the country.

Table 1 – ‘Six Steps’ to the UNECE National PPP Readiness Assessment



The process to a UNECE national PPP readiness assessment is graphically depicted in Table 1 above, while the following timeline provides the approximate target completion dates for each of the six steps:

Step No.	Description	Target Completion Date
1	Fact Finding Mission	October 2011
2	Preliminary Report	August 2012
3	Consultation and Peer Review	August-November 2012
4	Working Level Workshop	9-10 October 2012
5	Improvement Process & Final Report	2013
6	Strategic Action Plan	2013

1.4 Methodology

Where possible, primary sources were the main sources of information used throughout this report. These include, information obtained from responses to the pre-visit questionnaire from various stakeholders, and from the consultations with the various public officials, representatives of the business community and the banking sector, and representatives of international organisations.

A number of secondary sources were also used in compiling this report, and these were mainly studies prepared by reputable international organisations, including International Financial Institutions.

2. Recommendations

The recommendations are structured in a sequenced approach, starting with developing institutions and procedures, including training and capacity building; the importance of infrastructure plans, especially if sectoral plans are presented to the market as one comprehensive national infrastructure plan; and finally the drivers to PPP implementation, including a list of potential sectors where pilot projects could be initiated.

2.1 Developing Institutions and Procedures

2.1.1 Training and Capacity-Building²

Capacity-building at various levels was identified by all stakeholders involved in the RA as the most crucial need today to develop PPPs in Moldova.³

An extensive project-driven training and capacity-building programme focused on dealing with the main issues in PPP implementation. It is important that all stakeholders involved in the PPP process, including public officials, the banking sector, the business community and the public at large are fully aware of the PPP concept and its effective development.

Recommendation 1

The training is envisaged to be:

- project focused (adopting a ‘learning by doing’ approach); and
- once the basic skills are acquired, would eventually be delivered by local trainer using the academic institutions available in Moldova.

The subject-matter of training and capacity-building is envisaged to be focused on:

- 1. the gradual reduction of the overarching role of the State in the PPP process; and**
- 2. the need to create more space for the private sector to develop especially in the modernisation of Moldova’s infrastructure.**

² Training and Capacity-Building encompass the following: 1. *Human resource development*, which is the process of equipping individuals with the understanding, skills and access to information, knowledge and training that enables them to perform effectively; 2. *Organizational development*, or the elaboration of management structures, processes and procedures, not only within organizations but also the management of relationships between the different organizations and sectors (public and private), and 3. *Institutional and legal framework development*, which entails making legal and regulatory changes to enable organizations, institutions and agencies at all levels and in all sectors to enhance their capacities.

³ The need for training and capacity-building is not endemic in Moldova and UNECE’s experience is that training and capacity-building remain essential in enabling countries with economies in transition to develop their PPP programmes. In devising a capacity-building and training strategy, one should keep in mind that in order to be effecting and enduring, capacity-building and training should be a continuous, progressive and iterative process that is participatory, country-driven and consistent with national priorities and circumstances. Furthermore, this process has to be supplemented with the experiences of countries with a more mature PPP programme, whose best (and not so good) practices and lessons learned remain crucial in avoiding early mistakes and failures.

2.1.2 Inter-Ministerial Infrastructure Board

Formation of an inter-ministerial infrastructure board following a clear and concise description of job/role responsibilities, to share knowledge, promote good practice and to develop approaches to cross-cutting themes such as how to effectively attract private capital to Moldova, successful project development, innovative financing options and the use of ICT

Recommendation 2

The inter-ministerial infrastructure board, with all lead ministries represented at senior manager or director level (not at ministerial level) as focal points, to be led by the PPP Unit, will share knowledge, promote good practice and develop approaches to cross-cutting themes such as how to effectively attract private capital to Moldova, successful project development, innovative financing options and the use of ICT. This board should arrange PPP education and greater understanding of the PPP law for public servants, through the PPP Unit. It should also ensure that proper procedures are developed for PPP procurement. The focal points would also facilitate sectoral training and capacity-building provided by international agencies working on PPPs in their respective sectors. Alongside its core activities, the board should work in cooperation and consultation with specialized agencies such as the Moldovan Export Promotion, the Investment Agency, the E-Governance and others. This would increase its credibility and perceived power in order to enforce proposed recommendations.

Enhance cooperation and coordination among the lead ministries

Recommendation 3

International best practice consistently shows that unless the Ministries of Finance and Economy, which play such a crucial role in PPPs, work closely and in unison in devising the best PPP programme for the country, the overall result is that the line ministries get mixed signals on the PPP policy to be followed. It was observed that the PPP Unit and the Ministry of Finance are not working as closely as would be expected in good practice.

2.1.3 Relocating the PPP Unit

Consider relocating the PPP Unit from the Public Property Agency within the Ministry of Economy Public to the Prime Minister's Office

Recommendation 4

Thought should be given to relocating the PPP Unit from the Public Property Agency within the Ministry of Economy to the Office of the Prime Minister. There are no hard and fast rules, but countries where their PPP unit was located at the appropriate level of authority have performed best. The location of the PPP Unit within the Office of the Prime Minister would provide the PPP Unit with the required authority it would need in its dealings with Government Ministries, agencies, municipalities and private sector entities, in order to ensure PPP is established and implemented successfully. This position would also allow it to have the necessary strategic view and oversight, above that of the line Ministries, and furthermore, it would create a new model of public assets management. The direct coordination of the

Unit's activity would help increase the implementation of other reform within those ministries that have linear correlation.

2.2 Elaborating a National Infrastructure Plan (NIP)

2.2.1 National Infrastructure Plan (NIP)

Develop a ten-year, cross-sectoral National Infrastructure Plan (NIP), in consultation with local authorities, private sector parties and trade unions, with the Ministry of Finance as the lead ministry.

Recommendation 5

The NIP must include rigorous and transparent funding and realistic but detailed affordability analysis; this will result in a more efficient identification and ranking of potential PPP projects. To ensure coherence, it could be incorporated in/lined to Moldova 2020 Policy Document and interconnected with regional development strategies in order to benefit, additionally, from existing funds. A number of pilot projects should be identified within the NIP as the first to market, after proper initial appraisal (including pre-feasibility studies) has been undertaken. Running such projects would be a great demonstration for the local public authorities of the Government's political willingness to support PPP implementation and a significant example of cooperation/coordination. The NIP should be nationally and internationally promoted, to attract widespread interest.

The National Infrastructure Plan 2011 – United Kingdom⁴

The United Kingdom's National Infrastructure Plan 2011, produced by The Treasury in October 2011, is a good example of a NIP that Moldova might want to look to emulate. In essence, the plan sets out:

1. a clear design for the UK's infrastructure (vision);
2. a new strategy for coordinating public and private investment;
3. new investment in critical infrastructure projects; and
4. a new focus on delivery.

A NIP is a more potent weapon in a country's arsenal than individual plans of line ministries when it comes to attracting infrastructure investment into the country. Due to the intrinsic nature of infrastructure projects, investors in such projects think long term and a NIP assists them to better understand the public sector's long term goals in infrastructure development of a country. Additionally, it should also formulate incentives to provide for a potential development of Science Infrastructure, essential for intellectual capital and innovation in Moldova. The NIP should therefore be considered as a sales tool for encouraging private sector involvement, while at the same time ensures that the line ministries are in tune and work together across all sectors rather than working in isolation with the risk of having one

⁴ Available at : http://www.hm-treasury.gov.uk/national_infrastructure_plan2011.htm

sector (usually transport) much more advanced in its strategy and plans than others (such as health and education).

2.2.2 Develop Fully Costed Infrastructure Plans

Ministries and Municipalities develop fully costed infrastructure plans based upon well-developed strategic service models and needs analysis as a first interim step to a NIP

Recommendation 6

These sectoral infrastructure plans would be used to then feed into the development of the NIP. The Government should also consider underwriting projects and/or providing viability gap funding for projects of national importance.

2.2.3 Develop Strategic Service Models

Review existing ministerial/sectoral plans versus the country's need, and to develop strategic service models (SSM)

Recommendation 7

It is important to have these plans reviewed by all government ministries, in conjunction with local authorities, within their particular sector, based upon an area needs analysis. In this way each Ministry would have a high level plan for the location of its services throughout Moldova. For example, a healthcare SSM would contain the location by city or town, of particular health services, extending throughout the country; all services from tertiary, secondary, mental, primary and community and elective care would be allocated to a particular location. This would provide indicators to where the infrastructure should be located and prioritised.

2.3 Driving PPP Implementation

2.3.1 The PPP enabling environment

The enabling environment is the expression that encompasses government policies that focus on creating and maintaining an overall environment that is conducive to the development of PPPs. This sub-section provides a number of recommendations identified by the UNECE Team while examining the prevailing enabling environment in Moldova. The recommendations focus on the macroeconomic, business, financial, regulatory, legal and governance climates.

2.3.1.1 Macroeconomic climate

The Government addresses selected areas in the macroeconomic climate (such as a tightened fiscal policy coupled with policy intervention to stabilise the rate of inflation, competence of the independent National Bank) to stand a better chance of attracting external bidders for its infrastructure projects to ensure value for money for the citizens. Having a stable Macroeconomic environment is of high importance for the private business partners.

Recommendation 8

2.3.1.2 Business climate

The Government addresses selected areas in the business climate, such as the real or perceived barriers related to:

- companies establishing themselves in Moldova, *inter alia*, economic and political stability, unfair competition, unequal access to judiciary, bureaucracy, road tax for foreign vehicles, duty on some imported goods and protectionist policies;
- Corruption; and
- Views expressed by businesses that Personal Guarantees (which should be defined in Law and Regulations) sought by lenders were so onerous as to deem most development projects impossible (lenders sought Government support to underwrite any PPP developments and to provide gap funding where required).

Recommendation 9

2.3.1.3 Financial climate

The following policies aimed at:

- encouraging longer-term lending for infrastructure projects to link project finance to the lifetime of the asset;
- applying Basel II provisions; and
- stabilising local debt interest rates for long-term infrastructure projects, which could seriously jeopardise the public sector affordability and therefore the viability of any potential PPP projects, to the point where it would be impossible to bring them forward.

These policies should be promoted by the Government of Moldova to lay the foundation for its PPP development.

Recommendation 10

Enhance and encourage the bond market for infrastructure development***Recommendation 11***

This is important in order to develop the economy and the nascent bond market, including providing the necessary legal and regulatory powers aimed at increasing local autonomy and municipal borrowing power in order to encourage all the major municipal authorities to issue bonds to supplement their revenue generating powers to raise the necessary finance for PPP projects in a sustainable manner.

2.3.1.4 Governance Environment**Introduce the standard use of internationally-recognised accounting and reporting standards.*****Recommendation 12***

Policy intervention aimed at introducing these standards, especially International Financial Reporting Standards (IFRS) and Resource Accounting Budgetary (RAB) for public expenditure would be conducive to attracting potential foreign investors to Moldova.

Develop a rigorous business case approvals process for the lifecycle of any project, from its inception through to operation, especially including programme and project appraisal.***Recommendation 13***

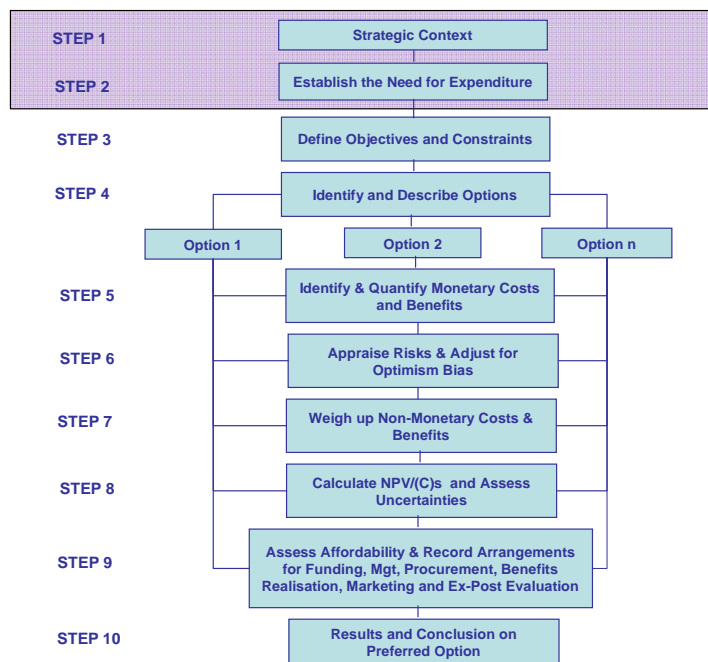
The Ministry of Finance should take lead authority for all project approvals, whether procured through the PPP model or traditional. The procurement route should then be decided upon the basis of value for money and affordability. Furthermore, the selection/creation of an independent body to audit and check the Ministry of Finance's respective activities is recommended.

A typical business case approval process for a PPP project is shown below in Table 1, with a more detailed breakdown of the process to Outline Business Case approval shown in Table 2.

Table 1 - Key stages of typical PPP project business case process



Table 2 - Typical Outline Business Case process for PPP Project



2.3.1.5 Legal Framework

All stakeholders shared concerns regarding the judiciary, though it was reported that reform was underway. This matter would of course be of significant concern to potential foreign investors.

Accelerate the judicial reform to ensure independence and competence in the judiciary. *Recommendation 14*

The PPP Law of Moldova lays down a framework within which PPPs are to be developed in the country. As with any other framework legislation, it needs to be complemented by subsidiary legislation and administrative provisions along the PPP journey.

One of the challenges is to develop subsidiary legislation to substantiate the framework PPP law. A number of candidates for subsidiary legislation have been identified, such as: *Recommendation 15*

- **define more the compensation to be paid to the private partner in case of early termination of the PPP contract;**
- **standard tender documents and other template documents; and**
- **mitigating measures to offset or reduce the adverse effect of the short duration of the tender process in the PPP Law to ensure that this does not constitute a barrier for international bidders from participating in the tender process.**

Clear and enforceable dispute resolution and arbitration provisions are crucial for a country to attract public partners into its infrastructure projects. The PPP law provides clear arbitration clauses that the parties could include in the PPP contract, and these are explained in more details in the section on the legal framework below. However, the challenge is to ensure that public authorities are comfortable with their inclusion in the PPP contract.

Ensure that public authorities do not resist the inclusion of recourse to international arbitration in the PPP contract as a means of dispute settlement. The legal framework should ultimately allow such arbitration, mainly as it is a vital point in order to attract foreign investors. *Recommendation 16*

2.3.1.4 Regulatory Framework

Establish separate regulators in each of the main infrastructure sectors. *Recommendation 17*

2.3.2 Project identification, selection and procurement

Enhance the identification, selection and procurement stages of infrastructure projects, in order to have a better chance of attracting external private sector interest, to ensure the project is appropriate and to protect both public and private sectors:

Recommendation 18

- **introduce Most Economically Advantageous Tender (MEAT) concept in bid evaluation;**
- **develop the supply chain arrangements for PPP projects through policy intervention;**
- **ensure that the Value for Money analysis also includes the non-monetary benefits;**
- **introduce Environmental and Social Impact Analysis (ESIA) as matter of course for all infrastructure projects, irrespective of whether they would be procured as a PPP or traditionally; and**
- **consider “bundling” small scale projects, especially at sub-national level. The examples from Germany of “clustering” of projects in schools and those in Belgium (sport facilities) constitute best practice.**

2.3.3 Moldova Infrastructure Association

Establish the Moldova Infrastructure Association in cooperation with the private sector.

Recommendation 19

The Moldova Infrastructure Association would include the inter-ministerial infrastructure board, local authorities, private sector parties and trade unions working together to promote successful projects, including using examples of successful PPPs in transition economies and developing countries and to enhance the infrastructure investment climate in Moldova. This association would also help to improve communications between Government and the market. Thus it could play the role of the PPP Market Voice in dialogues with the public authorities. Furthermore, having the advantage of its members’ combined experience, it could identify pitfalls and barriers of PPP market development. The association should organise seminars and knowledge sharing events to increase the expertise of its members. It should also look outwards internationally to network with expert associations such as the International Project Finance Association, in order to become knowledgeable in the shortest possible time.

2.3.4 Outsourcing

Develop a strategic performance and efficiency plan to outsource non-core services to the private sector under performance based contracts

Recommendation 20

The Government, led by the Ministry of Finance, might want to consider this route in order to improve service quality and reduce costs in sectors such as transport and social housing. The savings made within such a programme could go a long way to funding national infrastructure. More mature PPP markets employ outsourcing as a first step to full PPP, in order to build confidence in a partnership model with the private sector. This is considered easier to achieve than a full blown PPP and it is also a good starting point worthy of serious consideration.

2.3.5 Local Autonomy

Afford greater autonomy and tax raising powers to municipalities and local authorities.	<i>Recommendation 21</i>
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Some thought should be given to this possibility in order to enable municipal and local authorities to develop infrastructure more quickly at the local level. Although it is acknowledged that, in practice, local infrastructure often requires central government support, ideally, the need to refer to it and the additional bureaucracy which that brings will be diminished. A framework as such should also include ensuring financial control by local authorities' budget departments and central control for projects above a certain size.

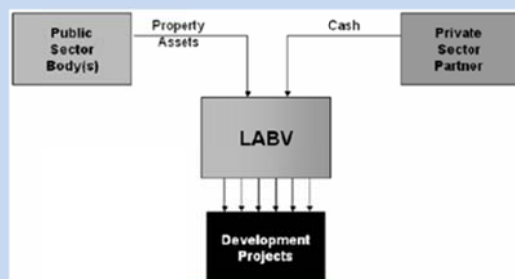
2.3.6 Estate Asset Management

Public bodies responsible for large public estates should develop central asset registers for their assets	<i>Recommendation 22</i>
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Ministries responsible for sectors such as healthcare, education and justice should develop such registers and should also proactively set about identifying which assets are surplus to need and then seek either to dispose of them on the open market, or use them in LABV PPPs for industrial and commercial development. A description of the LABV (Local Asset Backed Vehicles) PPP model is described table 3 below:

Table 3 - Local Asset Backed Vehicles PPP model

Local asset backed vehicles (LABVs) are special purpose vehicles owned 50/50 by the public and private sector partners with the specific purpose of carrying out comprehensive, area-based regeneration and/or renewal of operational assets. In essence, the public sector invests property assets into the vehicle which are matched in cash by the private sector partner, as illustrated in the diagram.



The partnership may then use these assets as collateral to raise debt financing to develop and regenerate the portfolio. Assets will revert back to the public sector if the partnership does not progress them according to pre-agreed timescales through the use of ‘options’ which prevent land-banking, thereby assuring speedier delivery.

The potential for this sort of delivery vehicle in the public sector is enormous, with numerous municipalities and other public sector bodies investigating the approach. The benefits also are very significant. LABVs incentivise the private sector to invest and deliver over the longer term, as returns are subject to performance of the partnership over 10–20 years. This longer-term investment perspective is the single most important benefit of the LABV approach.

The purpose of the vehicle can also be grounded in wider public sector regeneration objectives that are beyond physical development and financial returns. For example, many LABVs are being set up in the context of economic development objectives. These objectives may be drawn narrowly (for example, building incubator units) or widely (for example, creating a vibrant and attractive town/city centre).

Source: [Journal of Urban Regeneration and Renewal, Vol. 1 No. 4.](#)

2.3.7 e-Procurement

Explore the full potential of e-procurement

Recommendation 23

Moldova should fully explore the potential of e-procurement (a process of carrying out the entire tendering cycle online, including submission of price bid and payment). It is likely that the improvements in efficiency will mean that any system development and installation will be self-financing. E-procurement will also help to improve transparency and reduce corruption within public procurement.

2.3.8. Potential Areas of PPP Activity in Moldova

PPP is a relatively new concept to Moldova hence a past record of successful completion of projects is not available. However, in the past, the development of some PPP projects has been attempted within Moldova to varying degrees of success: viz, medical imaging equipment; multi storey car park (MSCP) at Chisinau airport; and the Socora-Balti water project. Also various analyses and studies have been carried out and indeed continue to be carried out currently. For example in December 2011, the Government tendered a car park PPP project and in 2012 the Ministry of Environment sought, technical and financial advisors to prepare a feasibility study for a PPP in the water sector for upgrade of the water system in the north of the country.

This section provides a summary of project proposals for PPP development put forward by various stakeholders in Moldova involved in the RA. It is important to point out that list should not be construed as exhaustive or imply that other projects are less worthy of attention.⁵ It is envisaged that after participating in an in-depth training programme the various stakeholders will identify additional, currently unthought-of opportunities.

Table 4 - Summary of potential PPP projects identified in the RA

- new road for the south of the country;
- by-pass for Chisinau;
- maintenance of existing roads;
- railway wagon repair plant in Basarabasca;
- redevelopment of inner-cities bus stations;
- trolley buses in towns and cities;
- redevelopment of Chisinau airport;
- Information Technology Park in Chisinau;
- residential and commercial accommodation planned by the Ministry of Defence.

2.3.8.1 Transportation

According to the 2012 Doing Business report, Moldova's poor transportation network alongside inefficiencies and corruption continue to create one of the costliest markets for trading across borders. In order to improve business environment it is crucial to facilitate their possibility of efficiently receive inputs or export their outputs. A ten-year transportation strategy was due to be completed in November 2011, with an updated version due in November 2012, for approval in 2013, and this could provide a useful platform for potential PPPs. However any such plans would need to be fully costed.

⁵ In the peer reviewing process, for example, other potentially feasible projects were pointed out. These include: (1) the development of the railway wagon repair plant in Basarabasca, where a certain degree of interest exists by private parties, though it is important to prepare a robust Outline Business Case etc.; and (2) it was pointed out that buses remain the main form of inter-city transport and the redevelopment of bus stations on a PPP basis could be feasible.

A strategic roads programme exists in the Land Transport Infrastructure Strategy for 2008-2017, where the focus would appear to be on the rehabilitation and modernisation of the existing network as opposed to the development of new roads, although the Ministry of Transport did promote a new road for the south of the country as well as a by-pass for Chisinau. These projects might also provide an opportunity for the authorities to measure society's readiness and willingness to pay road tolls.

Consider procuring the new road for the south of Moldova as well as a by-pass for Chisinau as a PPP *Recommendation 24*

The capital for the rehabilitation of the roads network is being supplied by EBRD. Once the roads have been rehabilitated, then an opportunity to outsource the maintenance of the roads would be available to the Government. Whilst this is not a traditional PPP DBFO⁶ model, it appears to be a good opportunity for the government to introduce private sector competition and improved performance and service delivery into the maintenance of the national roads network using performance based contracts. Local companies can then learn from foreign companies and achieve expertise transfer. This approach may also be applied to city streets and traffic systems and has been adopted successfully internationally.

Outsource the maintenance and rehabilitation of the roads *Recommendation 25*

External funding has been successfully used in procuring new trolley buses for Chisinau. It may be worth expanding this scheme elsewhere. Also the potential outsourcing of the operation and maintenance of public transportation operations, to improve service levels and reduce costs may be worth investigation, especially in regard to railways, though once again, it is almost certain that any rehabilitation works would require public capital as the payback period for private capital would be too long.

Consider outsourcing operation and maintenance of public transportation operation in major towns and cities *Recommendation 26*

Intermodal Transport Hubs/Terminals in the biggest cities could also be examined (combining railway stations, roads, car parks, bus stops, commercial areas, and others). It is recommended to analyze in more detail the Car Parks matter and a whole strategy to be carried out. Adjusting the Parking Policy to PPP Projects would be an appropriate and solid foundation. Such a policy should encourage people to park in appropriate places, thus having the benefit of making pavements available for the pedestrians.

Consider procuring trolley buses in towns and cities as a PPP *Recommendation 27*

⁶ Design, Build, Finance and Operate

2.3.8.2 Water and Waste Water

Use the PPP model to improve the overall quality of water supply at the municipal level *Recommendation 28*

This is a good candidate for PPP development. Previous EU studies indicate the possibility of water and waste water infrastructure schemes with a capital value of up to €50m. Interest in water development was expressed by Chisinau municipality and could work well at the municipal level. Bankability may be possible as local public finance appears problematic. One solution to this may be greater autonomy for local authorities and higher levels of tax raising powers within municipalities, or else central government underwriting. Inter-municipal bundling may be required in order for any PPP to have the necessary scale.

2.3.8.3 Solid Waste Management

Use the PPP model at the municipal level to manage waste *Recommendation 29*

This is also a good candidate for PPP development, again at a municipal level. There is interest in exploring this option and also the possibility of Energy from Waste and district heating. Bankability may be possible if familiar technology is employed. The same issues regarding local finance and scale apply to waste PPP as they do to water. There was talk of a UNDP inter-municipality programme and waste could be a good candidate for inclusion in such a programme.

2.3.8.4 Airports and river ports

Use the PPP model to redevelop airports into a pan-International logistics hubs, *Recommendation 30*

There may be potential to redevelop the Chisinau and possibly Balti airports as PPPs. The latter has been identified by the authorities as a possible PPP project, though the advice received from international PPP experts with expertise in airport PPPs is that the redevelopment of Balti airport offers a number of problems, including the fact that the old runway cannot handle bigger planes, has no modern handling facilities, and would have to be completely rebuilt. Series doubts were also expressed about the viability of the airport in terms of passenger and cargo traffic. More in-depth needs' analyses are therefore recommended before any firm plans are made to redevelop/rebuilt Balti airport, irrespective on the method of procurement.

Some views were also expressed about the need to develop river ports, though it is understood that some of these might be located in disputed waterways.

2.3.8.5 Energy

Use the PPP model to develop cleaner, safer, and more sustainable renewable energy sources, including municipal waste to energy projects. *Recommendation 31*

Moldova is almost totally dependent on energy imports which results in high costs for energy and high political risks associated with the current supply. This matter is of vital importance for Moldova's economic growth, however it's an area unlikely to make significant progress with government or donor funding alone. There is potential to explore the development and operation of interconnectors between Moldova and its neighbours, to improve security and cost of supply. Creating an appropriate environment for PPPs has the highest probability of successfully improving the current situation. Also the Co-gen plants need to be rehabilitated but the existing company's high debt levels would need first to be addressed before private capital could be attracted. Bankability could be an issue.

2.3.8.6 Industrial Park Developments

Develop municipal-led Local Asset Backed Vehicle PPPs (LABV) for industrial parks. *Recommendation 32*

Growth zones around cities could be a good candidate again for municipal-led Local Asset Backed Vehicle PPPs (LABV) where a joint venture company is established between the public and private partners. The public asset (land) is provided by the local authority and the developer then brings the finance and development expertise. Both parties then share any profit generated from the rent roll within the development. This approach may require some central government subvention, dependent on the level of demand in any given area.

Use the PPP model to develop the Information Technology Park in Chisinau planned for 2014. *Recommendation 33*

The Ministry of Information and Communication Technology plans to develop an Information Technology Park by 2014, and this could be a good candidate to be developed as a PPP lease or LAVB arrangement.

2.3.8.7 Healthcare

Develop a blend of PPP and outsourcing, performance based contracts in healthcare, including in:

- **social care (retirement homes)**
- **diagnostics**
- **imaging and radiology**
- **Haemodialysis, and**
- **rehabilitation**

Recommendation 34

Healthcare PPP has had some success in Moldova in the past, and there would appear to be plenty of potential for further projects in the future both in accommodation, equipment, dialysis, imaging and non-clinical services. This would most likely be a blend of PPP and outsourcing, performance based contracts. Any projects would be subject to health insurance receipts, Government affordability and scale. However, for example in the case of community care facilities, it would be quite straightforward to bundle these to achieve the necessary scale for a successful PPP. Other aspects are co-location of healthcare services with other public services such as social care provision. The Ministry of Health has already carried out some good work in the development of strategic service models for the five key districts and this is a good first step in developing a healthcare infrastructure plan. Among the list of projects identified by the Ministry of Health to be procured/ outsourced as a PPP are:

- social care (retirement homes)
- diagnostic services
- imaging and radiology services
- Haemodialysis facilities, and
- rehabilitation services

2.3.8.8 Education

Use the PPP model to modernise the education estate

Recommendation 35

70% of the existing schools were built in the 1950s and 60s, while the other 30% were built in the 1980s and 90s. Therefore, the estate is in need of large scale modernisation, which would represent a major opportunity for PPPs if the modernisation planning is carried out properly. Schools and further and higher education accommodation projects are good candidates for PPP. Modernisation is not simply the refurbishment of existing schools and colleges but a large scale rationalisation and redevelopment of the estate, beginning with a modern schools and colleges service model. However, the Ministry of Education does not at present have an estate management agency so this work should be contracted out to those with the necessary expertise. It is also suggested to take into account possible future demographic changes in the country while planning for an agency as such. Any PPP development would be subject to Government affordability.

The ministry expressed the view that no new schools were required but that many schools needed to be refurbished. What was essential, before any PPP projects were possible, is to better define what was actually required in terms of quantity and scale. This was, in effect, a schools modernisation programme, which should begin with examining the current schools estate and then moving towards what a modern schools estate for Moldova would look like. It was only at this point that a schools infrastructure plan could be sensibly developed. PPPs will be very difficult to attain within the education sector where a piecemeal approach to small scale development was undertaken. It is recommended that the planning must be carried out at the strategic level first before any capital development was undertaken.

2.3.8.9 Prisons

<p>Develop an estate management plan before considering the PPP model as a possible procurement vehicle in the prisons and correctional facilities' sector.</p>	<p><i>Recommendation 36</i></p>
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Currently only three of Moldova's prisons were considered up to international standard, so with that level of need for modernisation, there could be an opportunity for PPP development, subject to scale and affordability constraints. Prisons have been successfully developed using PPPs internationally, just like hospitals and schools. The Ministry for Justice agreed that the first step should be to develop an estate management plan to develop the scope and costs of the accommodation requirements, before considering the optimal procurement route.

2.3.8.10 Sports

<p>Consider developing the national football stadium in Chisinau planned by the Ministry of Regional Development and Construction as a PPP</p>	<p><i>Recommendation 37</i></p>
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PPPs have been used worldwide in connection with the development of sporting infrastructure, including (but not solely) for football stadiums. The main purpose of a football stadium is to host football games, but a stadium is an excellent venue for a myriad of events, including fairs and cultural activities, such as music concerts. A typical PPP contract for a sports facility would also include complementary revenue generating activities such as:

- car parks
- shops
- restaurants, and
- other consumer service providers.

A number of peer reviewers however questioned whether it was wise to have a national stadium with a 30,000 seating capacity given the size of Chisinau and of Moldova. A needs analysis study is therefore recommended before a firm decision is taken on the seating capacity.

2.3.8.11

Residential Housing and Commercial Accommodation

Consider constructing and maintaining the planned residential housing and commercial accommodation in Chisinau and other parts of Moldova using the PPP model

Recommendation 38

PPPs are very well suited for accommodation type assets, such as schools, hospitals, prisons, as well as residential housing and government accommodation. PPP projects in residential housing and office accommodation are primarily intended to increase the overall stock and address housing affordability and accessibility challenges.

In the coming years, the Ministry of Defence is planning to develop over fifteen hectares of public land as residential and commercial accommodation. This sort of development could be perfectly undertaken through the PPP model as long as a detailed costed plan is prepared in advance of the procurement stage.

3. Infrastructure Needs in Moldova

International experience in the UNECE countries and beyond have consistently shown that infrastructure investment and development strategies and plans should begin with an understanding of the needs, be it on a national, regional, local or municipal level. Once the needs have been identified, strategic service models should then be developed for the delivery of public services and lastly an infrastructure plan developed for the delivery of the infrastructure required to support the delivery of the services. This sequence of needs, service model, and infrastructure represents international best practice for the efficient and cost effective delivery of infrastructure, which ultimately improves the quality of life of the citizen and the economic performance of a nation or region, in a meaningful way.

Typically, governments' needs focus on some or all of the following: growing a sustainable economy; creating opportunities; tackling the socially and economically disadvantaged; improving health and wellbeing; protecting the environment; safer communities; and, the delivery of high quality and efficient public services.

Quite often public authorities tend to rush into "delivery" mode as they are naturally keen to see capital works commence, having made assumptions with respect to demand, without having first necessarily undertaken needs identification and subsequent programme and project appraisal, to ensure deliverability of solutions that properly address public needs.



Map of Moldova

One of the key challenges facing governments in the UNECE region and beyond is to achieve the right balance between social and economic infrastructure on the basis of available

resources. It is therefore important for public authorities to get their priorities right vis-à-vis the economic and social needs in the country.

One of the key questions posed to stakeholders in Moldova during the consultations was precisely on what they considered as the key economic and social infrastructure needs today in the country, and which of the two, in their view, should be given priority.

In respect of economic infrastructural needs, there appeared to be widespread consensus among the respondents and stakeholders that significant investment was required in the sectors of:

1. transportation;
2. water and waste water;
3. waste management
4. energy; and
5. telecommunications.

The PPP model has been proven to work well, internationally, in the first three of these sectors, and whilst investment in both the energy and telecommunications sectors would normally be a solely private sector activity linked to deregulation of these markets, the PPP model can be used in the energy sector in respect of Energy from Waste and some Renewable Energy developments.

In respect of social infrastructural needs, again there appeared to be widespread consensus that the following sectors were of priority: healthcare, education, housing (residential and commercial), and prisons. All of these “accommodation” type projects are very well suited to the employment of PPP. Projects to develop facilities generally operate on an asset availability based contract,⁷ which in turn leads to much improved service at reduced cost to the public sector.

Furthermore, there was identification of the need to develop infrastructure that would directly enable economic development, for example the development of industrial and technology parks. This type of development can employ a type of PPP, whereby some public equity was concerned, or where public land and/or property would be used as the public sector’s contribution to the partnership.

When asked about the prioritisation of infrastructure needs in Moldova a slight majority of respondents indicated their belief that economic need was of a higher priority than social need in Moldova today. This view mirrored that of the PPP experts consulted during the peer review process, who argued that Moldova should focus on ‘hard’ (economic) infrastructural projects initially before moving to ‘soft’ (social) infrastructure projects. It is therefore recommended that the focus should first be on economic infrastructure projects, especially those which do not pose a burden on the public purse, before embarking on the social infrastructure projects that would entail periodic availability payments over the whole-life-cycle of these projects.

Several challenges to the delivery of Moldova’s needs were raised by respondents. From a funding perspective these included: lack of public capital and of government underwriting;

⁷ Where unitary payments are effected on the basis of the asset availability. In other words, if 90% of the asset is available, the unitary payments are also reduced accordingly.

efficient use of public resources; difficulty in accessing foreign capital; lack of available debt especially beyond a tenor of ten years; and onerous lending terms. This is normal as the debt tenor does not match the lifetime of the assets being proposed. Refinancing and other methods could be used to overcome this within a PPP structure.

Political and institutional challenges identified, included; need for closer working between Ministries; decentralisation and increased local autonomy and municipal borrowing power; greater inter-municipality cooperation; greater consultation between government and private sector before decisions are taken; reform of public administration; reduced bureaucracy; improved PPP and commercial skills within the public sector; more transparent procurement and greater liberalisation and independent regulation of existing markets; and increased outsourcing, to encourage improved performance through competition.

In respect of geographical needs, responses were uniform in the areas identified as outside Chisinau, in southern and central Moldova, and in the rural areas and small towns. Most of the economic activity is concentrated on Chisinau. Views were expressed for the need to transfer more activity away from Chisinau in order to develop a balanced society. Stakeholders opined that the national needs were identified, agreed upon and reflected in government policies such as the Moldova 2020 policy document and other various official Government Decisions.

It was roundly confirmed by respondents that neither sectoral Strategic Service Models, nor a National Infrastructure Plan, existed in Moldova at the time of writing. However, sectoral strategies in sectors such as Water, Roads and Energy do exist.

There was widespread agreement among respondents that the people at large were supporting of private capital for infrastructure development and also that greater education was required across Moldovan society regarding infrastructure/PPP development. There was also a widely held view that neighbouring countries (Ukraine and Romania) faced similar infrastructure development challenges and that an opportunity exists for cross-border collaboration to jointly address common needs for the benefit of the citizens, in areas such as energy interconnectors. Some dialogue on this front had been had in the past but the general view of respondents was that this dialogue needed to be further developed and with more purpose, that is, there was a need to focus on deliverable projects rather than mere academic discussions.

4. How is Moldova progressing in the PPP process?

PPP is a relatively new concept in Moldova and, as such, understanding and knowledge of its basic principles is justifiably patchy across the public and private sectors. A number of projects have been initiated or are under consideration, while a few others are in the pipeline (a list of all PPP projects being currently undertaken in Moldova, as provided by PPP Unit at the Public Property Agency within the Ministry of Economy, is contained in Annex IV⁸). PPP is best understood within the National PPP Unit, which is lead PPP development in Moldova, and it would be fair to conclude that the level of knowledge amongst the other stakeholders is rather low.

4.1 General consideration

It was observed that some confusion existed between the understanding of outsourcing of public services and the PPP model, even to the point where some respondents thought that any contract between the public and private sectors represented a PPP. All respondents duly accepted the need for greater knowledge of PPP within the public, private and civic sectors of society and indeed were unanimous in their desire and calls for support from others with this knowledge to help them develop a greater understanding. All in all, the entire situation is completely normal for a country setting out on its PPP “journey”.

Good procurement and commercial knowledge and skills existed within the public and private sectors and these were readily transferable into the PPP area. On the private side, local banks, companies and firms in all likelihood would need to look to partner with foreign counterparts in order to achieve PPP skills transfer at the management level. On the public side there already existed a drive to raise PPP understanding through a series of one-off seminars in 2012, having held three such seminars in 2011. There does not seem to be a systematic follow-up strategy to these seminars, and all public sector stakeholders involved expressed the need for greater expertise in the appraisal and preparation of projects.

Greater coordination within the public sector and also the inclusion of private sector parties became the norm in other countries with a more mature PPP process, and this coordination and level of engagement should be further encouraged in Moldova to help raise understanding more speedily and consistently across the board.

Political will was correctly identified by a number of stakeholders as the single most important aspect of successful PPP development. That was closely followed, again correctly, by the availability of capital, that is, affordability. Also highlighted was a need for expertise.

Civic awareness of PPP was understandably low and this would normally follow in due course once the practitioners had sufficient subject matter expertise. The concept of *user pays* seemed to be understood and accepted by the public to a degree but also needed to be promoted, along with PPP understanding.

Unfortunately no records appear to exist recording the historical performance and delivery track record for previous public capital projects in Moldova procured traditionally. These

⁸ One of the main criticism by the international PPP experts during peer reviewing was that this list constitutes a ‘wish list’ of projects, whereby in order to ensure credibility in the eyes of investors, a list of projects (which could be later on incorporated into a National Infrastructure Plan) needs to be backed by pre-feasibility or preferably feasibility studies.

statistics would be very helpful in setting the current benchmark for public works projects and give a good indication of what was achievable in respect of timescales and costs. According to international best practice, the PPP model offered a number of advantages over ‘traditional’ public procurement, especially as it increased the certainty of outcomes (that is, ‘on time’ and ‘on budget’ delivery). The key differences between the two procuring methods are contained in Table 5 below.

Table 5 PPPs and ‘traditional’ public procurement

PPPs as an alternative to ‘traditional’ public procurement

There are different ways in which the private sector can invest in public infrastructure projects. On one end of the spectrum we find the ‘traditional’ public procurement, while on the other end, we find outright privatisation. PPPs are essentially what comes in between, and are different from both ‘traditional’ public procurement and outright privatisation of public assets. In the case of privatisation, for example, accountability for service delivery and ownership is transferred on to the private sector, while accountability in the PPP model remains vested in the public sector.

The key differences are:

- specifications in PPPs are measured in terms of ‘outputs’ rather than ‘inputs’ as in ‘traditional’ public procurement;
- the private sector is responsible to finance, build and operate the asset;
- the public sector ‘purchases’ the services through regular payments (service payments) or income generated (user fees) over the life of the contract.
- in a PPP, any costs overruns remain at the private sector’s risk;
- risks associated with costs of design, construction, operation and maintenance, and demand for the use and service provided by the asset, are transferred from the public to the private sector in a PPP project;
- in a PPP, construction costs are funded by the private sector, thus relieving the pressure on government funding for infrastructure projects requiring significant capital investment; and
- the whole life-cycle approach in the PPP model vis-à-vis traditional procurement ensures that the private sector selects the most efficient and sustainable solution for the long term rather than the cheapest solution in the short term.

It was also observed that public services have been contracted out to the private sector in order to achieve better value for money for the public purse, though unfortunately no details were provided. This is very encouraging for PPP development as PPP is a simple extension of this concept. It would be beneficial to understand the Service Level Agreements (SLAs) and contract management arrangements for these services.

4.2 PPP Capacity – Public and Private Sectors

As expected at this stage of PPP development, Moldova does not yet have the necessary subject matter expertise or skills within either the public or private sectors, to develop and deliver a major PPP programme. Besides the PPP Unit, the Ministry of Health has most PPP experience of any of the line ministries through development of a medical imaging

programme. Institutional capacity building at both the national PPP Unit and the line ministries is needed in order to improve the skills of public officials dealing with PPPs.

On a more positive note, there appears to be a degree of commercial expertise within the public sector in contract dealings with the private sector, especially within the Public Property Agency. This also appears to be the case at the municipal level (at least in Chisinau), where pilot infrastructure projects are being developed with support from agencies such as EBRD.

Overall, despite some organised training in place, there is a clear need for upskilling within the public sector and this point was universally identified by all stakeholders. Not just in the area of PPP but also in project appraisal, feasibility, business case development, legal issues, procurement, value for money, affordability and budgetary management, approvals processes and contract management (see recommendation on capacity-building and training).

It was observed that there was also a lack of formal PPP co-ordination and knowledge sharing between ministries and government departments. The Ministry of Economy has access to international best practice but this is not enough for Moldova to develop any meaningful PPP activity.

Within the private sector there are four large scale construction companies, which by partnering with foreign companies may have the capacity to undertake large capital projects. Some of these companies have experience of PPP in social housing. However, locally there is a shortage of Facility Management companies, while the lenders, as it will be highlighted below, do not seem inclined to lend long term.

There were no replies on the local architecture market capacity for infrastructure development but one would assume that local firms would partner with leading foreign firms as it is normal in international practice at the beginning. There appears to be quite good PPP understanding and corporate financial and legal expertise amongst the local advisory market, which can of course use its international network effectively to import any required skills.

As with the public sector, all private sector stakeholders unanimously called for the opportunity for training and education with respect to PPP. They also agreed that a public education process was important.

Lastly, energy supply capacity was identified by respondents as a possible PPP constraint.

4.3 PPP Project Identification, Selection and Procurement

The Government development plan 2011-2014 identifies the priorities for public infrastructure and is a very good step towards a national plan, though it appears that Multi Criterion Analysis (MCA) and needs demand analysis may not have been employed in its production. All stakeholders concurred that this development plan was the closest document to a National Infrastructure Plan. This document is needed to identify the priorities for public infrastructure (see further the 'Recommendations' section above).

It was not certain whether Cost Benefit Analysis (CBA) has been employed for specific project identification, to date. Infrastructure plans would not appear to be costed, a vital aspect in successful implementation as they need to be linked to budgetary affordability. The

Ministry of Finance would normally have ultimate sign off on any plans as they will carry the budgetary accountability role. PPP project budgets would normally be ring-fenced by the Ministry of Finance once the Outline Business Case was completed and before the procurement began, otherwise there is the risk that bidders would be discouraged.

One encouraging aspect was that private sector parties were consulted during project identification and preparation. This was in effect “Soft Market Testing”, a very important aspect of pre-procurement activity. Whether it was formalised or not, is not known at this stage (for example, no information was available on whether tools such as Information Memorandum (IM) or Prior Information Notice (PIN) were in use).

“Bundled” procurement, whereby a number of small scale projects (such as waste to energy projects) are packaged into a single, larger procurement for efficiency and value for money, appears not to have been employed in Moldova, to date. This can be particularly effective when used on co-location / community projects in sectors such as solid waste management.

There would not appear to be clear decision making criteria with respect to deciding which procurement path was followed for any given procurement, that is, how to decide whether a project was procured traditionally or through PPP? Value for money analysis appears to be purely monetary, not including the important non-monetary benefits. One qualitative benchmarking tool available to assess procurement options is the Public Sector Comparator: the risk-adjusted, estimated full lifecycle cost of a project if it was carried out by conventional in-house means. It is expressed in terms of net present value. In other words, when the government approves the project where it seeks to involve the private sector through a PPP, private sector bids are assessed against public sector benchmarks to determine value for money.

A risk analysis matrix is currently being developed by the PPP Unit. The legal division within the Public Property Agency is providing strategic PPP legal advice, though it is unlikely that the Agency is properly equipped and has the necessary project experience to provide PPP project/transaction advice.

Some work appears to have been carried out regarding the pre-procurement stages of PPP but not much beyond that. A milestone project procurement and delivery plan was yet to be developed. There was no external oversight in place at the time of writing. Environmental and Social Impact Analysis (ESIA) have been advised but it is uncertain as to whether they have been carried out for any projects to date. The post award aspects have still to be addressed, such as contract management arrangements.

The supply chain arrangements for PPP projects are undeveloped at this stage. This will be an important aspect to be addressed for any prospective foreign parties. The Government can play an important role in addressing this through policy intervention.

Thinking on refinancing would not appear to have been developed as there has been no need for it in the past. This aspect has not been addressed in the PPP law.

In bid evaluation, the concept of Most Economically Advantageous Tender (MEAT) was not currently employed, or indeed recognised. MEAT represents good practice internationally.

4.4 PPP - Post Award: Delivery, Operations and Performance Management

There was a commonly held view among respondents that PPPs and other major public capital contracts were well monitored by the public sector agencies, normally this would be done by the lead ministry together with the Public Property Agency. It appears that public sector costs, including public sector contract management costs are included in the approvals process but the degree to which this was carried out was to be further examined.

It was also observed that there appears to be no consideration of a Performance Management System (PMS), post contract, for example, the use of Key Performance Indicators (KPI) such as delivery milestones and operational availability. This would need to be addressed in any developed Post Award or Contract Management documentation. Performance bonds/guarantees do exist in simple construction contracts, so it would be a matter of extending these into PPP contracts.

The variation / claims process was in place but more clarity was required to better understand how it worked. It would be vital that this process was transparent in order to successfully attract foreign investors and to prevent “low balling”, where a bidder submits a low priced tender to win the work and then submits significant claims post award to ensure profitability, and where the outturn cost to the public purse ultimately ends up higher than the unsuccessful bids.

The Dispute Resolution Process (DRP) was also present and involves the Public Property Agency but a better understanding of its machinations would be necessary and set out in the Post Award, for foreign investors to be convinced. International arbitration has been used in the past for non-PPP projects through the International Court of Arbitration, and this option gives significant confidence to the investors.

The concepts of Force Majeure and Change in Law appear to be well understood by all stakeholders. Again, these would need to be set out in any PPP Post Award.

The question of prompt payment by Government was raised as an issue by a number of stakeholders. Given the large sums involved in typical PPP projects, cash flow and therefore prompt payment is vital to success, otherwise bidders will be disincentivised. Acceptable payment terms, linked to the Key Performance Indicators, should be set out in any Post Award.

4.5 The PPP enabling environment in Moldova

The enabling environment of a country can be loosely defined as the complex sum of conditions that allow or limit its economic and social development, depending on the actions and policies of various actors, especially governments. Conditions vary enormously across countries, ranging from a disabling or even oppressive environment in some cases, over restrictive or problematic environments, to models of good practice to be followed.

Among various components that the PPP enabling environment consists of, direct government responsibilities are very important; particularly the PPP policy statement, the PPP framework law, PPP regulations, institutions, finance and financial support. It is important to mention that a PPP policy should precede any new PPP law and subsidiary

regulations. While accompanied by the wider governance environment it should also be followed by the private sector environment.

The section should not be construed as providing a comprehensive overview of the enabling environment in Moldova, but instead it focuses on those elements in the enabling environment that might have a bearing on the successful development of PPPs in Moldova. While the analysis highlights areas in the enabling environment that are conducive to effective PPP development, it also provides a critique (see Section 2 - Recommendations) of the areas where policy intervention should be considered to improve the overall environment, which is so important to attract private capital to finance infrastructure projects in Moldova and to generally instil clarity and confidence into the public sector PPP system.

The relationship between the existing enabling environment and PPP development

A Government wishing to implement a PPP programme will need to consider early on in the project development whether there are any aspects of the existing enabling environment that would limit the scope of the PPP programme, and ultimately, the infrastructure projects.

All relevant elements of the enabling environment need to be considered, including the macroeconomic, business and financial climates, as well as the governance, legal, and regulatory frameworks.

A brief analysis of individual aspects of the enabling environment in Moldova relevant to PPP development is considered next.

4.5.1 Macro Economic Climate

The 2012 advised headline age profile of Moldova's population is given in the table below:

Age Group	Percentage of Total Population
0-14	16.4
15-64	73.6
65 +	10.0

The relatively small percentage of young people could represent a potential barrier to future economic growth and could also indicate that emigration might be an issue, as the young might be seeking opportunity and prosperity outside the country. The relatively low elderly population indicates low life expectancy. In contrast to developed countries in Western Europe, where circa 70% of healthcare spend is directed to elderly care and the management of chronic conditions such as Chronic Obstructive Pulmonary Disease (COPD) and diabetes, given the small elderly population the majority of care would be required by the very young and those of working age.

The 2010 life expectancy figures provided are summarised below:

	Male (years)	Female (years)
Urban	67.77	76.25
Rural	63.41	71.71

As expected, female life expectancy is higher than that of males, however overall life expectancy is relatively low compared to developed countries. The UK for example, has a male life expectancy of 78 years and female life expectancy of 82 years. Given the maxim that “a wealthy society is a healthy society”, it is clear that greater overall economic development is required to address the underlying causes of shorter lifespans within the population such as improved health and social care infrastructure and improved health promotion. Modern infrastructure would be one of the key elements in increasing Moldova’s economic prosperity, and PPPs, if properly developed, can play a significant role in achieving this goal.

The rate of unemployment for the second quarter of 2011 was reported as 6.2% of the active population. This level would not be considered exceptional by international standards, taking into account the global economic crisis. Views were expressed in certain quarters that there was a lack of growth and under-investment in Moldova. It was also expressed that the future unemployment level was expected to fall, but no assumptions or rationale for this prediction were provided.

Moldova is well served with respect to further and higher education, having some 33 higher education institutions. Also, with a high level of graduates in the population (23% of the population is university educated), there exists a sizeable, well educated workforce which would be attractive to potential foreign investors. However, at the same time, according to Moldova 2020, recent evidence shows that the quality and, increasing quantity of labour force has become a critical constraint to growth. As with any economy, it is important that the courses on offer at the further and higher educational institutes are relevant to improving economic growth and are aligned with industry needs, otherwise the highly skilled workers will emigrate to other economies where opportunities exist for them to apply their skills.

Moldova's natural resources are relatively few, the primary being agriculture, and also quarry materials such as granite, limestone, clay and sandstone. Moldova’s top goods exports and imports are:

Exports: Food and live animals, miscellaneous manufactured articles, beverages, tobacco, machinery and transport equipment.

Imports: Mineral fuels, lubricants and derivative materials, machinery, transport equipment, manufactured goods classified mainly as raw materials, chemical and derived products unspecified elsewhere.

Moldova imports almost all of its energy (95%). Responses to the questionnaire indicated that a lack of domestic energy resources, investment in electricity generating stations and renewable energy, alongside consequences of the break-away region of Transnistria conflict have led to such dependency on imported energy. The existing power plant located on the Transnitrian territory is believed to easily cover the majority of domestic energy needs and allow for potential significant amounts of export. Obviously national security of supply is an

issue with such high levels of imported energy as well as the economy's exposure to imported inflation. The percentage split of indigenous/imported energy was reported as 14.7 / 85.3%.

Moldova's largest trading partners are: the Russian Federation, Romania, Ukraine and Italy, with the Russian Federation being the largest of the three. Recent efforts have been made to rebalance trade and diversify into other market and success in this regards was achieved when in the latter part of 2011, trade with the EU, as a proportion of all trade, had broken through the 25% mark for the first time in the country's history.

Moldova's transportation network was described in the replies to the questionnaire as inadequate, in need of upgrading and investment, to ensure better routes for exports and to attract investment from foreign countries. This was in addition to the emphasis on roads infrastructure expressed in the needs identification section. The transportation network is dominated by road (93441km), with low levels of rail (1157km), trolleys (306km) and waterways (558km).

Moldova's credit rating as of 2010 was B3, given by Moody's Investors Service. Currently there are no credit ratings for local regions or municipalities.

Historical GDP annual figures from 2006 to 2010 as provided by the Ministry of the Economy are elicited in the table below. Growth remained steady and sustainable between 2006 and 2008 but fell dramatically in 2009, recovering again in 2010 to previous levels. Although still steady in 2011, signs of gradual slowdown were already obvious in 2012. GDP is projected to be maintained at stable and sustainable levels in the short to medium term. It is worth noting that the trend of GDP ratio of private / public activity has grown over recent years.

	2006	2007	2008	2009	2010
GDP (in current prices), mln lei	44754	53430	62922	60430	71849
GDP (in comparable prices) in % by previous year	104,8	103,0	107,8	94,0	106,9

It is noteworthy that the asset register provided indicates that a high majority of all assets in Moldova are owned by the public sector. It is advisable that this be rebalanced to reflect a more developed economy. Governments typically establish a central asset management unit, whose objective is to realise benefit for the public purse through disposal of surplus assets and looking at PPP / Corporate Joint Venture development opportunities, with a private sector development partner.

According to the National Bank of Moldova (NBM), annual inflation rate at the end of 2012 was 5%, while the current rate is 3.7%. This constitutes significant improvement from the reported annual inflation in September 2011 of 8.8%. This trend indicated that the National Bank's inflation control strategy was working successfully despite the pressures of imported inflation, remittances and Forex exposure, as Moldova's economy is small, open and very susceptible to drivers outside its control. Lower inflation, together with sustainable growth, would be advantageous in attracting private capital.

The national budget shows a small deficit. The ratio of public debt to GDP was reported as 31.93% in 2010, having grown from 22.37% in 2008. Public indebtedness can significantly

impact upon a nation's capability to fund infrastructure programme, including PPP projects, and as such needs to be tightly managed, so as to avoid boom and bust and problems with project affordability.

The NBM base rate as of August 2011 was 10%. This had been increased from 8% earlier in 2011. The increase in base rate and subsequent drop in inflation would indicate that the NBM's prudent policies are successful. Commercial bank loan interest rates are reported as having dropped from 15.2% in January 2011, to 14.1% in August 2011. This reduction was explained as a reaction to a lack of demand for commercial loans due to the negative impact on business and consumer confidence during the recent economic downturn.

The exchange rate of the Moldovan Leu appeared stable against both the US\$ and the Euro having appreciated against the former by 2% in 2011 and depreciated by 1% against the latter in 2011. Stable exchange rates and predictable Forex risk are significant factors in attracting private capital for infrastructure development. NBM interventions will help to maintain this position.

There was overwhelming agreement between the stakeholders that the Government of Moldova had insufficient public capital available to it and also that infrastructure investment needs far exceed the budget possibilities.

In 2006 Moldova restructured its loans through the Paris Club to address accumulated arrears to bilateral creditors. There is no record of local or municipal governments failing to meet any debt obligations. This is obviously good news in respect of credit worthiness.

A number of potential restrictions to the smooth PPP development in Moldova were discernible from the analysis of the macroeconomic climate, and were identified in Table 6 below. A number of recommendations were made in 'Section 2 – Recommendations' with a view to address some of these potential restrictions,

Table 6 – Potential restrictions to PPP development – Macroeconomic Climate

Areas to be addressed in the macroeconomic climate for a smooth PPP development in Moldova

- maintain inflation rate under control as high inflation deters foreign private investment in infrastructure projects; and
- reduce the national budget deficit given that public indebtedness can significantly impact upon a nation's capability to fund its infrastructure programme.

4.5.2 Business Climate

There appears to be confusion among many of the stakeholders as to what the current corporation tax rate was, with the rate for "legal entities" set at either 0%, or spread between 0% and 12%. This was subsequently clarified as follows: the corporation tax rate stood at 0% from 2007 to 2012, when a rate of 12% was introduced. Despite this increase, the present

level of corporation tax rate compares favourably internationally and would not be a barrier to attract potential investors in infrastructure projects.

In recent years the Government has actively sought to increase the attractiveness of the economy to private enterprise. With this in mind the Government took positive steps by reducing corporate tax from 24 per cent to 18 per cent. To support this, an approach termed ‘amortised premiums’ has been implemented. This is an ability to write off expenses versus the original cost and intangible assets rather than it is stipulated by the accounting process. Regionally and internationally the corporate tax rate is competitive (with for example, Ukraine and the Russian Federation, whose rate is 20 per cent, and Poland, at 19 per cent). However, it lags both Latvia and Lithuania who have a 15 per cent tax rate.

The view among stakeholders was that it was relatively easy for a company, local or foreign, to establish itself in Moldova, despite the fact that some barriers to ‘doing business’ in Moldova were identified. Having said that, a number of incentives to overcome the real or perceived barriers were also highlighted by respondents, including the following:

- Wide range of tax incentives granted to investors in particular sectors;
- Exemption from income tax for long term capital investment;
- Reduced bureaucracy;
- Benefits of Moldova’s trade policy, favourable trade agreements;
- Moldova's geo-economic placing, access to EU, CEE and CIS;
- Seven free economic zones and two international ports with free land and free industrial areas for activities such as industrial production of export goods, sorting, packaging, and external trade and transport;
- Free use of public assets for commercial development; and
- Sharing project risks in PPPs.

There was an interesting divergence amongst key stakeholders regarding their views as to what they considered to be the key factors that an investor considered when assessing a country. This is one of the questions that Moldova, as a country, would have to be able to give a clear and unambiguous answer to if it hoped to successfully attract private capital in infrastructure projects.

Moldova does not place any restrictions on foreign investors in respect of repatriating profits, once the necessary taxes have been paid. This is very attractive to potential investors and obviously good news for the Government in its attempts to attract private capital for PPPs. To date, there does not appear to have been any major difficulty experienced by commercial enterprises regarding foreign exchange transactions and repatriation to and from the state.

Profit repatriation: Moldova

Profit repatriation is defined by the Webster's New World Finance and Investment Dictionary, as "to return foreign-earned profits or financial assets back to the company's home country."

Unrestricted profit repatriation once all the tax liabilities are met remains one of the most crucial decisive elements for prospective investors in a country. This does not only entail the legal restrictions, but also other restrictions as a result of bureaucratic and administrative obstructions.

Moldova's legislation allows for profits to be repatriated. The availability of hard foreign currency resources is crucial for private sector participation in infrastructure development. In its quest for private sector participation in its infrastructure, Moldova should ensure that no real or perceived barriers – legal or otherwise – to profit repatriation are in place, and that prospective investors are confident that they would be able to repatriate their profits derived from their investment unhindered.

According to the World Bank report "Doing Business – 2012", Moldova is part of the group of states that have managed to get the best results in terms of creating favourable conditions for businesses. Although improvements have been made, some respondents thought that there was still more progress needed in respect of: improved transparency, enhance political stability, reduce government inefficiency, tackling corruption and advance access to finance.

Corruption in Moldova

According to the Corruption Perceptions Index of Transparency International, Moldova currently is ranked 94 out of 176 in the world. This level of corruption, even if just perceived, acts as a significant disincentive in attracting private capital to the country. Greater transparency in the courts and also public procurement processes is normally required in this case. Without transparency external investors are unlikely to invest in Moldova given the other investment alternatives available elsewhere.

The trades unions in Moldova are represented by the independent National Confederation of Trade Unions of Moldova (CNSM), consisting of 29 national trade union centres and comprising over half a million members. CNSM crosses all sectors of the society. It is also a member of the International Trade Union Confederation, which is beneficial by making them able to learn from their fellow members in respect of PPP and infrastructure development as well as having a fair representation, accordingly.

There was unanimous agreement among stakeholders that Moldovan business was currently protective and insular and needed to be outward facing to exploit international opportunities.

In the case of bankruptcy, some protection was afforded to creditors but there was no limited liability for shareholders.

Regarding market capacity, it was reported that there were currently 1,081 construction companies in Moldova, with ten companies having in excess of one hundred employees.

Therefore, it appeared that sufficient local capacity existed to man the supply chain for a future infrastructure plan, with local companies partnering with major foreign companies, having the requisite expertise.

There was a belief in both the public and private sectors that there was currently a skills deficit and that the educational training available does not correspond to market needs. The exception to this point was in construction where it was felt that, presently, sufficient skills do exist. Emigration was also highlighted as a major issue for business development in Moldova and a reason for skills shortages. A national programme of public works would allow trained labour/employees the opportunity to work at home and also develop the economy.

Payment terms appear to be contract – specific and not standardised, although there seems to be typical payment terms of 30 days for goods delivered.

SMEs come across as able to bid for large government contracts and also able to form partnerships with other SMEs to jointly bid for public contracts. Internationally, in the majority of countries, SMEs were very often not legally barred from bidding, but in practice, due to the onerous nature of public procurement, they were in effect barred. This aspect would be worth further analysis in an effort to improve competition within the local market.

The Ministry of the Economy noted that among the priority actions undertaken by the Government in the activity programme "European Integration: Freedom, Democracy, Welfare 2011-2014" was the removal of administrative constraints in the business environment, anti-competitive practices in commercial transactions, providing increasing credibility among the public and private sectors and guarantee the right of private investment. Some thoughts of stakeholders around encouraging business growth in Moldova were:

- Reduce the administrative burden on business environment;
- Optimising tax system;
- Ensuring a competitive market;
- Strengthening the institutions of law;
- Access to finance;
- Promote foreign investment.

A number of potential restrictions to the smooth PPP development in Moldova were discernible from the analysis of the business climate, and were identified in Table 7 below. A number of recommendations were made in 'Section 2 – Recommendations' with a view to address some of these potential restrictions.

Table 7 – Potential restrictions to PPP development – Business Climate

Areas to be addressed in the business climate for a smooth PPP development in Moldova

Although the general view was that it is relatively easy to set up a company in Moldova, there were still a few real and perceived barriers to doing business in Moldova that warranted close attention. These included: political and economic stability; bureaucracy; customs fees ; road tax for foreign vehicles; duties on some imported goods; and protectionist policies.

A key area where there was a clear barrier (real or perceived) was related to corruption. Furthermore, an obstacle highlighted by the business community regarded with the onerous guarantees sought by lenders, seen as jeopardising the likelihood of infrastructure projects. Both private and public sector stakeholders concurred that there was a skills deficit and that further policy interventions were necessary to align the education programmes to market needs.

4.5.3 Financial Climate

Responses to the questions pertaining to the current banking system were positive from the banking sector but were somewhat critical from other stakeholders, who saw the current arrangements as predatory. According to the Banks Association of Moldova, its positive view of the banking sector was also held by IMF, WB and EBRD.

Other commercial banks were of the opinion that there was sufficient competition and availability of finance for business within the local market. Some businesses however disagreed with this statement.

The Banks Association of Moldova also attested that during the twenty years since independence, the Moldovan banking system maintained its stability and development potential and that since 1996 Moldova adopted Basel I (international committee on banking supervision). It was noted that the financial sector of Moldova, including the banking sector, was subject to annual evaluation by the World Bank and the International Monetary Fund Financial Sector Assessment Program (FSAP) and according to evaluation results, it was noted that Moldova's banking legislation was in concordance with European Union directives and central banking practices. The application of Basel II was only recommended, but not necessarily required. However, some provisions of Basel II, namely, those related to ensuring the transparency of banking prudence, already applied to the banking system in Moldova. With regard to minimum capital requirements, they were met by all the banks licensed by the NBM. Currently the minimum capital set by the Bank was 100 million Lei. Capital adequacy at 12% was thought to be high as compared to the European average level of 8%, so liquidity was not considered an issue for the current local business market, in fact there appears to be an over supply instead. NBM reported the capital adequacy level to be 29%, much higher than the one quoted by the Banks Association.

The Banks Association of Moldova also noted that an increase of 13% of the balance of deposits in 2010, and 8% in first eight months of 2011, showed a definite increase in the

credibility of the banking system. The degree of intervention of the Moldovan economy in 2010 was 58.9% and the share of bank credit in GDP was quoted as 37.5%. Monetisation of the economy also showed a high value of about 52 percent. These indicators have recorded a significant increase, indicating the development of financial intervention in the Moldovan economy, compared to the years 2000-2005. Also, these indicators compared favourably with those of countries in the region.

There was further praise from the commercial banks for the role of the NBM in its recent stewardship of the banking sector and the economy, to help maintain stability. In 2010 the Government established the National Committee for Financial Stability.

In answer as to whether or not Government offered underwriting to commercial banks, personal bank deposits were guaranteed by the Government up to 6000 MDL. The Government does not typically interfere with commercial banking operations but in 2011 it supported a local commercial bank to the tune of 437 million MDL.

Commercial banks expressed willingness to lend to any viable project but had reservations concerning the construction sector. The debt/equity ratio was currently circa 60%, which is well below what was typical in a PPP. Also long term debt as traditionally used for DBFM⁹/DBFO PPP, e.g. 25 to 30 years, would not be available locally. The maximum tenor was stated as between 15 to 20 years. There was a need to link project finance to the lifetime of the asset.

There was a common view expressed that lenders were quite cautious towards long term investments but that generally there was strong competition in the short to medium term. Lenders' policies were not to lend and this stance had not been helped by the "Greek experience". Some also said that there was a degree of flexibility available with respect to tenor. Some Government bullet payment or sharing of refinancing risk may therefore be necessary for some PPP projects, as in DBFM/DBFO, to be viable in Moldova.

Further to the issue of long term debt availability, the margins currently charged by the local debt providers, between 6 per cent and 12 per cent, could seriously jeopardise public sector affordability and therefore the viability of any potential PPP projects, to the point where it would be impossible to bring them forward.

Lenders and construction companies were supportive of a consortium model, albeit they had little or no experience of working in one.

Private equity was mostly used in the industrial sector but it has, in the past, been employed in public infrastructure in Moldova (Genesis Moldova, which saw the use of finance to repair roads in the capital), although not significantly. However, it was important that the precedent exists, with respect to potential future developments. The issue for local equity providers would appear to be the scarcity of large scale projects in which to invest.

There was agreement between all banks that long term debt has been exclusively provided to the state by the International Financial Institutions, to date, rather than through special purpose vehicle instruments from commercial banks. However the National Bank made it

⁹ Design, Build, Finance, Maintain

clear in the consultations that such funding was time limited and the need to attract private capital was becoming increasingly urgent.

A small scale bond market exists in Moldova but from the responses gathered, the level of activity to date has been quite low. Government bonds were issued with two year maturity. The potential for project bonds for PPP or infrastructure would appear to be highly unlikely.

There exist many insurance companies within Moldova but there was no pensions fund market to attract into operational and steady state infrastructure projects. There is some interest in seeing if the pensions fund market could be stimulated by National Bank.

A number of potential restrictions to the smooth PPP development in Moldova were discernible from the analysis of the financial climate, and were identified in Table 8 below. A number of recommendations were made in 'Section 2 – Recommendations' with a view to address some of these potential restrictions.

Table 8 – Potential restrictions to PPP development – Financial Climate

Areas to be addressed in the financial climate for a smooth PPP development in Moldova

The margins currently charged by the local debt providers, between 6% and 12 %, could seriously jeopardise the public sector affordability and therefore the viability of any potential PPP projects, to the point where it would be impossible to bring them forward.

Linked to the above, local banks are currently somewhat reluctant to provide long-term lending for infrastructure projects commensurate to the duration of a typical PPP project of 25 to 30 years. The absence of long term debt availability does constitute a problem to PPP development, especially given that as a rule of thumb, the post-financial crisis debt/equity ratio in a typical PPP project is 80-20.

4.5.4 Governance Framework

It was observed that Government budget setting processes in Moldova were similar to those in other countries whereby the strategic element was centrally agreed and set out in the annual *Medium Term Budgetary Framework* (MTBF) after which each ministry was responsible for the delivery of the planned works and the control of the budget, with the Ministry of Finance having overall budgetary control.

All respondents agreed that a large majority of public infrastructure was developed at central government level, with a small amount decentralised to local government.

There was some difference of opinion regarding the development of public works on the basis of need. However all stakeholders agreed that the project appraisal process could do with improvement, especially in the area of PPP, which was not surprising given the lack of experience of this type of procurement within Moldova.

A greater role for the Ministry of Finance to act as gatekeeper, overseeing the appraisal process was called for and this would indeed represent normal practice elsewhere.

There was some divergence of view regarding current public procurement. Some thought that on the whole it was competitive, transparent and fair, whilst others argued strongly that current processes and procedures needed to be reformed and improved. Reference was made to the launch of the “SIA” which is the State Register of Public Procurement”, due to launch in 2013, and how this would help to improve the transparency of public procurements.

Simple construction contracts, or “Design & Build”, were the normal procurement procedures employed for major public works. This was entirely expected. The concept of Competitive Dialogue was “in place” but has not been employed to date due to its complexity and the lack of public sector skills capacity required in its implementation.

There were differing views expressed with respect to the clarity and transparency of evaluating criteria used in major public works contracts. Advertisement of major public contracts appeared to be comprehensive.

Some variations were observed in responses to the question as to whether public contracts currently favoured local businesses over foreign one. Some respondents clearly believed no local favouritism was present whilst others indicated that there was a 15% discount rate for local bids. This type of protectionism could act as a deterrent to foreign investors, especially in the supply chain management aspects of project costing, which are sizeable.

Other issues where there were differing opinions and a lack of knowledge among stakeholders were: contract standardisation; social clauses (including re-skilling and apprenticeships); and community gain. It appears that these areas could all be strengthened within major public procurement processes and public contracts.

Regarding pricing, it was observed that the Government does provide protection for low income households in respect of home heating and transportation. In the case of a PPP project, this would be factored into the project feasibility financial model during the assessment process.

Environmental protection appears to be in place for major public contracts albeit they do not appear to be co-ordinated through a single agency. To enhance this element, it is good practice to integrate environmental and social impact assessments within the Government’s project appraisal and business case approvals processes.

All parties agreed that there existed freedom of the press to investigate the award of major public contracts. In general press freedom helped improve investor confidence.

A number of potential restrictions to the smooth PPP development in Moldova were discernible from the analysis of the governance framework, and were identified in Table 9 below. A number of recommendations were made in ‘Section 2 – Recommendations’ with a view to address some of these potential restrictions.

Table 9 – Potential restrictions to PPP development – Governance Framework

Areas to be addressed in the governance environment for a smooth PPP development in Moldova

There was strong agreement among respondents that a rigorous business case approvals process, with integrated elements related to environmental and social impact assessments, needed to be introduced to provide transparency and better informed decision making with respect to major public expenditure programmes and projects, and that Government policy intervention in this respect would bring Moldova in line with international best practice.

The Ministry of Finance reported that while IFRS and RAB accounting were not currently in use, they will be adopted by 31 December 2012. In the corporate sector there was a plan to introduce IFRS across the board by 2014, with financial institutions already due to adopt the standards on 1 January 2011. SMEs were also being encouraged to adopt IFRS and it is likely that this will happen as its adoption becomes common practice within the public and private sectors. Obviously, IFRS adoption and well audited accounts, within both the public and private sectors, would act as a major help in attracting private capital to Moldova.

The apparent favouritism afforded to local business over foreign ones needs to be addressed as any form of protectionism would act as a deterrent to foreign investors in infrastructure projects.

4.5.5 Legal Framework¹⁰

Moldova enacted its first PPP Law in 2008.¹¹ A study commissioned by EBRD in 2011 observed a clear shift in the Moldovan Government departing from traditional concessions and focusing on the improvement of various public projects or public services via PPPs. All evidence gathered from the respondents' points towards a preference by stakeholders to the PPP Law over the concessions law in view of its more liberal approach that gave effect to the principle of freedom of contract among the parties. As indicated in other parts of this report, a PPP Unit within the Public Property Agency under the Ministry of Economy was established under the law to overview PPPs and register awarded PPP contracts.

¹⁰ This section draws on information contained in the EBRD 2011-2012 assessment of the Moldovan legal framework for concession prepared by Gide Loyrette Nouel (with special thanks to Mr. Bruno de Cazalet, Senior Counsel), and on the draft (unpublished) UNECE Comparative Review of PPP legal provisions in Central Asia and other CIS countries.

¹¹ Moldova has a generalised act incorporating the legal framework for PPP, including concessions as a form of implementation of a PPP and also a single act dealing specifically with concessions, together with other acts regulating concessions. The PPP Law No. 179 dated 10 July 2008 includes concession agreements as a form of realization of PPP. Specifically, Article 18 (5) of the PPP Law stipulates that the implementation of PPP through a concession agreement is regulated pursuant to the legislation on concessions. Provisions regarding concessions are contained in:

1. the Concessions Law No. 534 dated 13 July 1995;
2. the Law on administration and privatisation of public property No. 121 dated 4 May 2007;
3. the Law on local public administration No. 436 dated 28 December 2006; and
4. the Governmental Resolution No.102 dated 27 February 1996 on the implementation of the Concession Law.

The PPP Law is essentially a framework law that gives full control to the competent public entity in conducting the tender process, negotiating the PPP contract and monitoring its implementation. The law consents the public authorities to develop any type of project, not necessarily in those forms specified by the law, and as a matter of fact, some early projects have not fully matched any form of PPP described by the law.

A framework law is essentially a statute which is drafted in general terms and merely lays down a framework, mostly in the form of overall principles, objectives and guidelines. More detailed regulation is left to other, usually public bodies, principally the Government, administrative authorities, or in some cases and to some extent, the courts. This is precisely the situation with the PPP Law in Moldova, and the main challenges going forward in the PPP development is essentially the adoption and implementation of subsidiary legislation and administrative provisions. Considering that the Framework law in Moldova includes specific requirements that might be construed as preventing or hindering successful tendering, then the main challenge is to amend the framework law identifying, as stated, subsidiary regulations and procedures. A number of candidates for subsidiary legislation will be identified in this section.

The study referred to earlier, found that a practical challenge met by international bidders was the short duration of the tender process: the law allowed for a fixed, inflexible 60 calendar days' period between publications of the request for proposals to designation of the winning bidder. The law also grants an additional 30 days' period for contract negotiation with the winning bidder. This limited span of time could provide a formidable barrier to international bidders and possibly reduces the number of bidders that might lead to less value for money to the public authorities.

Another sticking point to which the PPP law has no clear answer relates to the amount of compensation which the public authority would need to pay to the private partner in case of early termination of the PPP contract (for either party's fault, or for external reasons, like change of laws or force majeure). This is a crucial issue that would need to be addressed at some point in secondary legislation.

Respondents to the questionnaire provided conflicting information about dispute resolution and arbitration. Needless to say, these would need to be completely clarified in order for foreign private capital to be attracted to Moldova. As far as the PPP law is concerned, arbitration clauses are allowed in the PPP contract but so far public authorities had resisted them mainly for two reasons: (1) the high perceived cost of international arbitration; and (2) the fact that an arbitral procedure would not give immediate relief to public authorities, for example, they will not have immediate access to the local law mechanism of application of interim measures (such as "step-in rights") in order to avoid the disruption of a core public service. Having said that, in June 2011, Moldova ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and this in itself should send a positive signal to international investors.

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (or the Washington Convention) is widely considered to be the leading international arbitration instrument devoted to investor-State dispute settlement. The Convention has 147 contracting states, and entered into force on 14 October 1966.

The Convention sought to remove major impediments to the free international flows of private investment posed by non-commercial risks and the absence of specialized international methods for investment dispute settlement.

The International Centre for Settlement of Investment Dispute (ICSID) was created by the Convention as an impartial international forum providing facilities for the resolution of legal disputes between eligible parties, through conciliation or arbitration procedures. Recourse to the ICSID facilities is always subject to the parties' consent.

Source: http://icsid.worldbank.org/ICSID/ICSID/AboutICSID_Home.jsp

After this brief general overview of the PPP Law, the rest of the section will focus on selected topics within the PPP legal framework in Moldova that have been grouped in four stages of a PPP project, namely:

- 4.5.5.1 the establishment;
- 4.5.5.2 the procurement;
- 4.5.5.3 the operation; and
- 4.5.5.4 the adjustment.

The non-exhaustive list of issues stipulated below constitutes international best practice, and these issues are considered among the most crucial elements in any modern PPP legal framework. Issues that are strictly related to construction, management, and operation of infrastructure that are mostly subject to contractual relations between the parties are not covered in this section.

4.5.5.1 Establishment

The 'establishment' refers to the initial stage in a country's PPP development when the necessary legislative framework is adjusted in order to undertake PPPs effectively, and where the necessary institutional arrangements are being put in place.

A. PPP institutional requirements

It is important for potential investors to know that the PPP legislation of the host country clearly spells out the legal power and capacity of a government authority to award the infrastructure (PPP) projects and to enter into or sign the project (PPP) agreement with the private partner.

Article 2 of the PPP Law of Moldova provides that all public legal entities may be subjects of the PPP Law. The latter does not expressly identify any Contracting Authorities, and it does not make any reference to other laws/regulations that allow a clear identification of the same. The law defines *public partner* as any legal person under the public right (authorities) or an

association of such persons which are able to establish a public private partnership rapport subject to the required authorizations.

B. Right to do PPP in specific sectors

It is important not only for potential investors, but also for the public entities, to identify legislative provisions that identify not only the sectors (such as roads, railways, waste management and so on) in which PPPs projects may be awarded but also, if any, the sectors/activities where PPP projects are specifically excluded by legislative provisions.

The PPP Law of Moldova neither provides for any list of eligible sectors, nor does it restrict sectors eligible for PPP. However, it is clear from Article 17 of the Law that a PPP can be granted in respect to any work, public service or function of the Contracting Authority.

4.5.5.2 Procurement

The procurement stage is when public authorities are involved in processes such as the selection of the private partner, how unsolicited proposals are dealt with in legislation, and how, if any, are concessions awarded without a call for competitive tender.

It is widely known that legislation stipulating for the clearly written process of selection of the private partner provides greater stability and predictability for investors, including providing governments with a clear guidance as to the procedures to be followed and the parameters within which negotiations are to be concluded. A number of key issues related to the procurement stage have therefore been identified, namely: (a) selection criteria; (b) selection procedure (including issues related to transparency, neutrality, and non-discrimination); (c) establishment of the selection committee; (d) unsolicited proposals; (e) awarding concessions without competitive procedures, and (f) availability of standard tender documents.

The PPP Law of Moldova (Articles 25 to 32) stipulates that all PPP contracts are awarded through a tender process without any exception. Although the law does not make a specific reference to the principles of transparency, neutrality, and non-discrimination, Articles 3 to 6 provide that the selection process should be based on the principles of balance, effective competition, freedom to enter into contracts, and cooperation. On the selection of the private party, Articles 27 to 30 provide that it be selected by a Commission appointed by the Contracting Authority. Although basic tender rules are included in the PPP Law, no detailed rules forms of procedures (such as standard tender documents) are included. Standard tender documents and other template documents should naturally be included in secondary legislation. Article 29(5) stipulates that documents pertaining to non-successful bidders are to be kept for a period of 3 years, although these records are not publicly accessible during this period. The PPP Law does not provide a framework for unsolicited proposals.

4.5.5.3 Operation

The main issues in the operation stage are related to the contractual arrangements, but other important issues, such as, the possibility of repatriation of profits/capital and tariff setting/control are also of vital importance for the private sector partner when considering whether to tender/participate in the PPP project. Other issues, such as government support/guarantees and other security interests, are not only crucial for the private sector partner but also for the financial institutions that are securing the necessary financial resources.

A. Government support and guarantees

In order to mitigate their risks in a PPP project, the project sponsors and lenders seek support and assurances from the host government with respect to various project issues. In most cases government support refers to special measures of a financial and economic nature that may be provided by the host government to enhance the conditions for the execution of a given project or to assist the project company in meeting some of the project risks. Accordingly, explicitly stated government support in legislation instils the necessary confidence in private partners, sponsors and lenders, whereas the government maximizes the potential interest in investing in its infrastructure projects.

The PPP Law in Moldova does not explicitly specify those public entities that may provide financial or economic support and guarantees to the private party. However, the Law does not prevent a priori the public authority to provide a guarantee for the proper implementation of the PPP project. Neither does it prevent the public authority from providing financial or economic support to the private party for the implementation of the PPP project.

B. Repatriation of profits

As stated above, the issue of profit and capital repatriation is of great importance not only to the private partner, but also for project sponsors and lenders. Therefore, from the private partners' point of view, it is crucial that the repatriation of profits derived from the PPP project in the respective country is not prohibited by legislation.

The PPP Law of Moldova is silent on these issues. Nevertheless, as stated elsewhere, Moldova does not place any restrictions on foreign investors in respect of repatriating profits, once the necessary taxes have been paid.

C. Project agreement: mandatory clauses

The project agreement is the main document regulating the rights and obligations of the parties, and in the main, the parties have freedom of contract. However, a number of standard mandatory clauses might be imposed on the parties by statute for inclusion in the project agreement. These mandatory clauses do effectively restrict the parties' freedom of contract, and as such, deprive them of the necessary overall flexibility to negotiate an agreement depending on the needs and peculiarities of a specific project.

The PPP Law of Moldova does not expressly provide a model PPP agreement. Furthermore, the Law does not provide a list of mandatory clauses/provisions that must be included in the project agreement. Mandatory provisions of a PPP agreement do however result from the provisions of the PPP Law, such as parties, object of the agreement, period of PPP, and so on. The content of such provisions is however left for the parties to agree through negotiations.

D. Tariff setting and tariff control

Tariffs and usage fees charged by the private partner may be the main sources of revenue to recover the investments made into the project, which means that the private partner will seek the ability to set and maintain tariffs and fees at a level that ensures sufficient cash flow over the whole-life-cycle of the project. However, the PPP regulatory framework in many countries might include special rules in setting and controlling the tariffs and fees for the provision of public services. Private partners and lenders will be particularly interested in the manner in which tariff setting and control are statutorily set and controlled, and whether there are any statutorily restrictions on the private partner's freedom to establish tariffs and fees.

Article 19 of the PPP Law of Moldova provides that the private party has the right to collect tariffs or fees depending on the form of the PPP and on the contractual provisions in the project agreement. The Law is silent on tariff setting by the private party.

E. Security interests

Generally, the project company will be prohibited from transferring or assigning any of the project's assets, agreements, rights and obligations to third parties without the consent of the host government. But it is essential for the project company to have the necessary power to give lenders a security interest in the assets, agreements and rights and obligations of the project company for the purpose of a project financing. Legislation that allows such an assignment or pledge, including the right of the assignee/pledgee to dispose of the assets in case of default by the assignor/pledgor, will certainly make it easy for the private partner to raise the necessary finance from financial lenders.

Article 34(3) of the PPP Law of Moldova specifically precludes the private party from creating security interests or other valuable guarantees over the object of the PPP without prior consent of the contracting authority, the breach of which can lead to the termination of the project agreement.

4.5.5.4 Adjustment

The 'adjustment' stage in the PPP project is where due to unforeseen circumstances, a number of adjustments need to be carried out, including in the case of default by the private partner (where the necessary step-in rights kick in to ensure that the project remains on track). Compensation in case of breach of contractual obligations, including at the end of the contractual agreement, and a functional and effective dispute resolution mechanism, are also fundamental in a long-term contractual agreement, and need to be adequately addressed in the partnership agreement.

A. Step-in right for lenders

Taking into account that lenders play an important role in financing the project, the public authority is often asked to grant lenders the right to "step into" the project company's rights and obligations in case of the project company's default under the project agreement. Hence, for a private partner to attract necessary finance for the project it is important to have statutory step-in right provisions or at least the possibility of stipulating such provision in the project agreement.

Step-in rights not statutorily available for lenders in Moldova, and in the case of default by the project company, the contracting authority is entitled to terminate the PPP project agreement and claim damages in court. However, nothing in the law precludes the parties to agree to the inclusion of step-in rights for lenders in the project agreement.

B. Expropriation/nationalization and compensation

The issue of a government guarantee against adverse acts of governments, namely for expropriation/nationalization is important to an investor coming to a country and doing PPPs.

Acts of expropriation and nationalization fall under the category of acts on grounds of public interest. As such, these acts are captured by general civil law provisions of Moldova, and are therefore not directly addressed in the PPP Law. Compensation to the private party is a clear candidate for secondary legislation.

C. Termination of the project agreement and compensation

Given that the termination of the project agreement triggers a series of compensatory claims as a result of interruption in services or their discontinuance, it is important for the innocent party to be adequately compensated. However, an attempt to stipulate all possible termination and compensation statutory clauses with any degree of precision can be inhibiting. Therefore, statutory intervention shall ensure that the parties have adequate flexibility and freedom in negotiating termination and compensation clauses in the project agreement.

Article 23 of the PPP Law of Moldova provides that compensation shall be paid by the defaulting party. Compensation to the private party for losses incurred as a result of termination on the grounds of public interest, and for losses incurred as a result of public authority acts, other than legislative or other normative acts, should be enforced through general civil law provisions. As a general rule, it remains a matter of the project agreement to define the amount of compensation and the instances when it is payable, keeping of course in mind that contracting authorities are generally resistant to compensation clauses.

D. Dispute resolution

Taking into account the complexity of PPP projects, it is of great importance for investors, contractors and lenders that any dispute arising out of the implementation of the project is resolved fairly and efficiently. There is the possibility to involve arbitration in a neutral jurisdiction, though in this case, the enforceability of foreign judgments regime in the respective country should also be considered. It is worth mentioning and taking into account that actions as such are always problematic regardless whether there is a decision of a court of law or an arbitral award.

Article 36(2) of the PPP Law of Moldova provides for international arbitration. However, as indicated earlier, despite the Article 36 provisions, public authorities in Moldova had hitherto resisted them mainly for two reasons: (1) the high perceived cost of international arbitration; and (2) the fact that an arbitral procedure would not give immediate relief to public authorities, for example, they will not have immediate access to the local law mechanism of application of interim measures¹² in order to avoid the disruption of a core public service. In a nutshell, although *de jure* access to international arbitration is possible, *de facto* public authorities take a dim view of reverting to international arbitration to solve contractual disputes.

A number of potential restrictions to the smooth PPP development in Moldova were discernible from the analysis of the legal framework, and were identified in Table 10 below. A number of recommendations were made in ‘Section 2 – Recommendations’ with a view to address some of these potential restrictions.

¹² One international legal PPP experts suggested during the peer reviewing of the report that Moldova should adopt a provision similar to that of Article 9 of the UNCITRAL Model Law on International Commercial Arbitration, whereby a request to a local court for interim measures does not contradict the arbitration agreement (cf. Article 9 of the UNCITRAL Model Law); in general, it would be a good idea if Moldova adopted an arbitration law based on the UNCITRAL Model Law.

Table 10 – Potential restrictions to PPP development – Legal Framework

Areas to be addressed in the legal environment for a smooth PPP development in Moldova

All stakeholders shared concerns regarding the independence and competence of the judiciary. Reform was a high priority and apparently underway, and this matter would of course be of significant concern to potential foreign investors. Nonetheless, it is important to acknowledge that, as a rule, making the judiciary fully independent is a rather time-consuming/long-lasting process.

Furthermore, there is a need to develop subsidiary legislation by developing secondary legal acts and clarifying the relationship between PPP Law and Concession Law in order to address a number of pending issues and to substantiate the PPP framework Law.

International arbitration clauses should become standard feature in the PPP contract, and failure would have a bearing on the level of participation by private partners in tendering for infrastructure projects.

4.5.6 Regulatory Framework

International best practice suggests that in order to achieve strong private sector participation in infrastructure projects, a gradual shift in the role of the state from service provider to policy maker, planner, coordinator, facilitator, and buyer of infrastructure services should take place. In line with this shift, the existing regulatory arrangements should be assessed, and the possibility should be considered of devolving the regulatory functions to newly-created independent bodies, with the line ministries keeping the responsibility for policy making and planning in their respective sector. This separation of responsibilities would enhance the credibility of economic regulation and provide the necessary level of confidence to investors that important issues, such as those related to tariff matters, are handled without undue political interference and other pressure. There are essentially two options available to implement such a strategy: either having a separate regulator in each of the main infrastructure sectors; or setting up a single cross-sector regulatory body. International best practice suggests that the first option would be attain better results.

Economic regulation has two main objectives: (i) to ensure that consumers have access to essential services on a sustainable and affordable basis, and (ii) to encourage private sector participation in the development of an infrastructure to provide those services. The functions of the regulatory body are elicited in Table 11 below.

Table 11 - Typical functions of the regulatory bodies:

1. setting tariffs and other service charges;
2. establishing standards for the terms and conditions of the services provided;
3. setting and enforcing market rules for the sector;
4. monitoring the performance of the regulated entities;
5. issuing, reviewing and cancelling licenses; and
6. reviewing agreements.

The success of such restructuring will depend to a large extent on public and investor confidence in sector regulators. This confidence will be based on perceptions regarding their technical expertise, efficiency, transparency, consistency and predictability of regulatory processes and decisions, and susceptibility to political and other pressure. To be able to withstand any pressure, the regulatory bodies should have administrative and financial autonomy. The latter can be achieved through use of fees levied from regulated utilities. Good sector regulation also relies on the competence and reliability of other sector participants. If regulated entities fail to submit requests for tariff adjustments, or do so with incomplete or inaccurate data, the regulators will be unable to act, or will act with incomplete information, or be forced to delay proceedings while waiting for the parties to complete the information.

Although some work has been done to establish regulatory bodies with the functions elicited above, more is expected in order to ensure private sector participation in infrastructure projects, and appropriate policy intervention should be considered to address this potential limitation in the enabling environment.

5. Conclusion

The Government of Moldova has quite rightly identified modern infrastructure development as a key element in the successful transition of its economy and in its goal to improve the prosperity and quality of life of its citizens.

A sizeable infrastructure deficit exists and it will require significant political stability and will, together with significant capital, both public and private, if a national infrastructure plan is to be built up and successfully implemented. Transparency and the removal of local barriers will be essential if Moldova is to successfully attract foreign investment for infrastructure development from international markets.

It is advisable that the Government does not to rush into “doing projects” before it has addressed a number of issues in the recommendations, and before it has the correct systems and processes in place, especially with regard to PPP developments. In other words, it is necessary to fully understand the project scope, or the “what”, before initiating procurement and delivering (the “how”). Considering the existing significant amounts of official assistance coming in aid of particular sectors, it is also important to identify the most persistent gaps and provide the best solutions using the PPP models. Such a course of action perfectly fits within the UNECE’s philosophy of ‘learning-by-doing’ which combines formal training and capacity building to address the “what”, with doing projects that represent the “how”. This however requires professional service planning. Otherwise, as has happened in many places before, projects risk failing, capital will leave the country and the opportunity to improve the country’s infrastructure will be lost for many years.

It is therefore recommended that the Government’s first step would be to develop PPP skills and institutional capacity, along with a long term, cross-sectoral, inter-ministerial NIP, whilst at the same time putting in place robust and transparent appraisal, procurement and approvals processes. Once these are in place, and with the appropriate dose of political will, Moldova would stand a very good chance of attracting the private capital it will need in order to achieve its infrastructure and wider social and economic goals, to address the needs of its citizens.

Annex 1

Detailed description of the ‘six steps’ to the UNECE National PPP Readiness Assessment

Readiness Assessment Step 1 – Fact Finding Mission

The Fact Finding Mission is carried out by the UNECE Team together with the host country, and consists of three key elements;

1. Understanding the enabling environment;
2. Comprehensive pre-visit questionnaire;
3. Extensive programme of meetings with decision makers and stakeholders.

Normally during the Fact Finding Mission, the national PPP unit, or lead government entity, helps to manage the responses to the questionnaire, arrange the itinerary for the fact finding mission and accompanies the UNECE Team throughout the time spent in the host country.

The pre-visit questionnaire (contained in Annex II) is a key component of the UNECE National PPP Readiness Assessment. It provides a thorough, clearly recorded and systemic approach to gathering the requisite information required to make the subsequent meetings with stakeholders and decision makers more targeted and productive, ensuring that the interviewees are familiarised with the relevant topics and well prepared before the meetings occur. Given the tight timelines involved in the meetings itinerary, this is a major benefit of the approach adopted.

The questionnaire was developed in such a way as to ensure requisite participation and input from both the public and private sectors. Some of the questions relate specifically to the public sector, some to the private sector and some to both. Respondents are not expected to answer all of the questions but rather only those they feel compelled to answer, or sufficiently qualified to do so.

The questionnaire is comprised of 372 questions, contained in two main parts, viz; National Overview and PPP Focus, both of which are outlined below. The numbers in parentheses represent the number of questions within the questionnaire relating to each topic.

Part1 National Overview

- 1.0 Economic & Social Need – Drivers for Change (18)
- 1.1 Macroeconomic Climate (29)
- 1.2 Business Climate (36)
- 1.3 Financial Climate (24)
- 1.4 Legal & Governance Environment (33)

Part 2 PPP Focus

- 2.0 General PPP Matters (35)
- 2.1 PPP Legal & Regulatory Provision, including Financial Risks (63)
- 2.2 PPP Policy Framework (21)
- 2.3 PPP Capacity – Public & Private (51)

- 2.4 Project Identification, Selection and Procurement (44)
- 2.5 Post Award; Delivery, Operations and Performance Management (18)

The programme of meetings was designed to engage all of the major stakeholders in Moldova who are involved in infrastructure development, both in the public and private sectors. In order to encourage interviewees to speak freely and openly about all issues in a way that made them comfortable, it was decided not to formally minute the meetings, verbatim but rather to record the main points made by interviewees apropos the questions asked by the UNECE Team. In this way the sensitive nature of some points is respected and protected, whilst at the same time the issues are addressed.

The list of decision makers and stakeholders to whom the pre-visit questionnaire was issued and subsequently participated in the meetings, during the week of 19 – 23 March, 2012, is contained in Annex III.

Readiness Assessment Step 2 – Preliminary Report

Following the fact finding mission a draft report of preliminary findings and recommendations for inclusion in the Action Plan, is prepared by UNECE Team for peer reviewing. This report identifies barriers within the enabling environment and provides a number of recommendations as to how they may be overcome, as well as considering potential projects where pilot PPP projects could be considered.

Readiness Assessment Step 3 – Consultation and Peer Review

At this point the draft preliminary report is shared with selected international PPP practitioners. The feedback received is used to quality assure the content of the draft report and to ensure the strategic context is correct. Once this review has been completed, the report is then sent to the Government of the host country.

Readiness Assessment Step 4 – Working Level Workshop

At this point the UNECE Team together with the national PPP unit/lead ministry conducts a two day workshop with middle management within lead ministries and other stakeholders to discuss the preliminary findings and recommendations with a view to obtain feedback for inclusion in the final report and to jointly develop a draft action plan for national PPP development, while at the same time identify priority projects.

Readiness Assessment Step 5 – Improvement and Final Report

The UNECE Team incorporates the feedback received from the various stakeholders involved in the Working Level Workshop to make final refinements and amendments to the Preliminary Report in order to produce the Final report.

Readiness Assessment Step 6 – Strategic Action Plan

The UNECE PPP Advisory Board presents the Final Report and the Action Plan for national PPP infrastructure development to the decision makers within the requesting Government. The Action Plan clearly sets out responsibilities for actions (owners) together with agreed timelines and target completion dates (TCDs).

Annex II

Pre-visit questionnaire

STRUCTURE

PART 1 - NATIONAL OVERVIEW

- 1.0 Economic & Social Need – Drivers for Change
- 1.1 Macroeconomic Climate
- 1.2 Business Climate
- 1.3 Financial Climate
- 1.4 Legal & Governance Environment

PART 2 – PPP FOCUS

- 2.0 General PPP Matters
- 2.1 Legal & Regulatory Provision for PPP, Including Financial Risks
- 2.2 PPP Policy Framework
- 2.3 PPP Capacity – Public & Private
- 2.4 Project Identification, Selection and Procurement
- 2.5 Post Award; Delivery, Operations and Performance Management

PART 1 - NATIONAL OVERVIEW

1.0 Economic & Social Need – Drivers for Change

- 101 What are the greatest needs affecting Belarus today?
- 102 Where are the areas of greatest need, geographically?
- 103 Have these needs been researched and identified?
- 104 If so, which social and economic indices have been employed?
- 105 Are these identified needs documented and widely available?
- 106 Have these needs been agreed upon and reflected in government policies?
- 107 Do national sectoral Strategic Service Models exist for the location of public services across Belarus, or at a regional level?
- 108 Does Belarus have an existing National Infrastructure Plan?
- 109 What do you consider to be greater; economic need or social need?
- 1010 What is the reason for your opinion?
- 1011 What, in your opinion, are the top five priorities for economic infrastructure?
- 1012 What, in your opinion, are the top five priorities for social infrastructure?
- 1013 What is your opinion based upon?
- 1014 In your opinion, is the electorate supportive of the use of private capital for infrastructure development?
- 1015 How do the needs of your country compare to those of your neighbours?
- 1016 Do you believe there is potential for collaboration with neighbouring countries to develop required infrastructure, where there is mutual benefit?
- 1017 If so, in what geographical areas, and in which sectors?
- 1018 Has any dialogue been had to date regarding such potential collaboration?

1.1 Macroeconomic Climate

- 111 What is the age profile of the 9.5 million population?
- 112 What is the current life expectancy in Belarus?
- 113 What are the current and projected net migration figures?
- 114 What is the current unemployment rate?
- 115 What is the future projected rate?
- 116 How many universities does Belarus have?
- 117 What % of the population is university educated?
- 118 What are Belarus's natural resources?
- 119 Does Belarus import its energy?

- 1110 What is the energy % split; indigenous / imported?
- 1111 What are Belarus's top areas of economic activity?
- 1112 What are Belarus's top exports /imports?
- 1113 Who are Belarus's largest trading partners?
- 1114 How would you describe Belarus's transportation network?
- 1115 What is Belarus's current credit rating? (source?)
- 1116 Is it "Investment Grade"?
- 1117 Do credit ratings exist for local regions or municipalities?
- 1118 What have been the GDP annual figures for each of the last five years?
- 1119 What are the annual GDP projections for the next 2, 5 and 10 years?
- 1120 What is the GDP split; public sector / private sector activity?
- 1121 What is the current public sector cost of capital?
- 1122 What is the current and projected rate of inflation?
- 1123 What is the current fiscal budget balance?
- 1124 What is the current public debt position as a percentage of GDP?
- 1125 Do you believe that the Government has sufficient public expenditure available to it, to deliver a major infrastructure programme?
- 1126 Has Belarus historically failed to meet any of its debt obligations?
- 1127 Has a local or municipal government within Belarus failed to meet any debt obligations?

1.2 Business Climate

- 121 What is the current corporation tax rate?
- 122 Do you believe this to be the correct rate? Please state why, or why not.
- 123 What is the commercial sectoral activity by %?
- 124 What is the size of the total workforce and how is it spread geographically?
- 125 How easy is it for a company, local or foreign, to establish itself in Belarus?
- 126 To your knowledge, what barriers, real or perceived, exist?
- 127 In your opinion, what are the main incentives available to attract foreign investment?
- 128 What are the main barriers to attracting foreign investment into the country?
- 129 What key factors do you think investors consider when assessing a country?
- 1210 How many companies are registered in Belarus?
- 1211 How many of these are indigenous?
- 1212 How many are foreign?
- 1213 What incentives does Belarus offer foreign companies?

- 1214 Are there any restrictions on foreign companies to repatriate profits, also referred to as “transfer and convertibility” (T&C) risk?
- 1215 Do many Belarusian companies have Joint Venture, exclusivity or sub-contracting relationships with major international companies?
- 1216 How would you describe business confidence in Belarus right now?
- 1217 What are the reasons underpinning your opinion?
- 1218 How would you describe the business culture in Belarus?
- 1219 Is corruption a problem?
- 1220 Would you say corruption exists more in the public or private sector?
- 1221 Are trades unions prominent in Belarus?
- 1222 Would you say Belarusian business culture is protective and insular, or confident and outward looking?
- 1223 How are most businesses constituted?
- 1224 Is there effective provision for bankruptcy and limited shareholder liability?
- 1225 How many major Construction / Development companies are present in Belarus?
- 1226 How many SMEs are registered in Belarus?
- 1227 Does the supply chain operate effectively in Belarus?
- 1228 Do mandatory payment terms exist in public contracts, e.g. 60 days?
- 1229 Do SMEs have access to large government procurements through effective subcontracting arrangements?
- 1230 Are there a sufficient number of educated / skilled workers available?
- 1231 Does the educational system provide workers with the correct skills?
- 1232 If not, where are the skills shortages?
- 1233 How can they best be addressed?
- 1234 Is the physical infrastructure fit-for-purpose, for business needs?
- 1235 Would you describe Government policies as “business friendly”?
- 1236 What changes, if any, would you like to see, to encourage business growth in Belarus?

1.3 Financial Climate

- 131 Is the banking system adequate for business and corporate activity?
- 132 Do you have confidence in the current banking system?
- 133 Please elaborate on your answer.
- 134 How would you describe the strength of the banks’ balance sheets?
- 135 Are the banks sufficiently capitalised?
- 136 Has the government offered any underwriting, guarantees or safeguards to commercial banks?

- 137 Is there sufficient liquidity in the current lending market?
- 138 If so, to what sector(s)?
- 139 How would you describe terms currently offered by lenders?
- 1310 What is the maximum term for which debt is / has been lent (years)?
- 1311 What pricing terms are offered for long term debt?
- 1312 How do these compare with international markets that you are familiar with?
- 1313 To your knowledge, has any private capital ever been invested in infrastructure projects, in Belarus, (equity or debt)?
- 1314 How available and reliable are long term debt instruments for infrastructure financing?
- 1315 Is project finance available in local currency?
- 1316 How would you describe government oversight of banking activity?
- 1317 Are you confident that the oversight is of the correct order?
- 1318 Are you confident that the banking sector can meet debt demand?
- 1319 Are local equity providers accessible?
- 1320 Is there an established bond market in Belarus? If so, is it accessible?
- 1321 Have you experienced or are you aware of any difficulties regarding commercial foreign exchange activity?
- 1322 Is there a well developed insurance and pensions market?
- 1323 Is it meeting business needs? If not, how could it be improved?
- 1324 Are credit ratings available for Belarusian businesses? (source?)

1.4 Legal & Governance Environment

- 141 Does senior political will exist within Government to support the development and delivery of a National Infrastructure Plan?
- 142 Please describe the current Government process for setting the national public budget and in particular the budget for infrastructure development and specifically the role of the Ministry of Finance.
- 143 Is public infrastructure development currently managed centrally or at a local government level?
- 144 Are all major public infrastructure programmes and projects identified on the basis of need?
- 145 Are all major public infrastructure programmes and projects prioritised using a rigorous Government appraisal process?
- 146 Are all major public infrastructure programmes and projects subject to a rigorous Government business case approvals process prior to procurement?
- 147 Is Government procurement competitive, transparent and fair?
- 148 What is the most common form of procurement for major infrastructure projects in Belarus, e.g. construction? Design & Build?

- 149 Has “Competitive Dialogue” ever been employed in public procurement in Belarus?
- 1410 Are public contract award criteria and tender scoring methodologies clear and transparent?
- 1411 How are major public contracts advertised?
- 1412 Do public contracts include terms to favour local businesses over foreign?
- 1413 Is there effective protection for Intellectual Property Rights?
- 1414 Do you believe the judiciary exhibits independence and competence?
- 1415 Are unsuccessful bidders fully notified and given the right of appeal?
- 1416 Do adequate Dispute Resolution procedures exist?
- 1417 Is access to third party arbitration available as part of these procedures?
- 1418 Are labour laws and workers’ rights well established?
- 1419 Is Government and corporate corruption being targeted and eradicated by political leaders?
- 1420 Is there standardisation of major contracts between Government and suppliers?
- 1421 What do you believe the advantages of standard contracts might be to the state?
- 1422 Do you believe there is sufficient community engagement in the development of infrastructure projects?
- 1423 Do major public contracts contain social clauses to benefit local communities?
- 1424 Does the Government provide financial support for low-income users of infrastructure or transportation?
- 1425 Do major public contracts contain clauses to protect the environment?
- 1426 Do major public contracts contain clauses to promote re-skilling and employment of unemployed citizens, by successful bidders?
- 1427 Do major public contracts contain the provision of apprenticeships for young people by successful bidders?
- 1428 Do you believe the press is free to investigate matters of public interest with respect to the award of major public contracts?
- 1429 Are environment laws clear and effective, and all available from a single source?
- 1430 Does Government use Resource and Accounting Budgetary (RAB) accounting and employ international accounting standards (International Financial Reporting Standards)?
- 1431 If so, for how long has it used RAB accounting for public expenditure?
- 1432 Do concessions currently exist and, if so, are they treated on or off balance sheet?
- 1433 Is co-location of public services a Government policy or objective?

PART 2 – PPP FOCUS

2.0 General PPP Matters

- 201 What would you say PPP is?
- 202 How do you think PPP works?
- 203 How would you describe “risk transfer” or “risk allocation”?
- 204 What risks are normally transferred in a PPP?
- 205 Are you familiar with “output based” specification?
- 206 How would you describe “Value for Money” for the public purse?
- 207 What is your understanding of the “project lifecycle”?
- 208 How would you describe “successful project delivery”?
- 209 What is the best way to ensure performance of the service provider?
- 2010 Are you familiar with “DBFOM”? If so, what does it mean to you?
- 2011 When and why, do you think PPP should be employed?
- 2012 What do you think the benefits of PPP are?
- 2013 What do you think are the main disadvantages and / or risks of PPP?
- 2014 What range of PPPs are you familiar with?
- 2015 What would you say is the single most important aspect of a successful PPP?
- 2016 Is the concept of “user pays” understood and accepted in Belarusian civic society?
- 2017 Are communities encouraged to commercially participate in PPPs or major public contracts? If so, how?
- 2018 How is community resettlement and rehabilitation currently provided for in PPPs or other major public infrastructure projects in Belarus?
- 2019 Would you say PPP is well understood within the public sector in Belarus?
- 2020 In Belarusian civil society, would you say PPP is understood and accepted as a means to deliver 21st century infrastructure?
- 2021 Are the public aware of the benefits of PPP?
- 2022 What would you say are the main misconceptions, if any?
- 2023 In your opinion, would a public educational programme re PPPs be worthwhile?
- 2024 What has been the traditional relationship between Government authorities and the private sector, in Belarus?
- 2025 Do you think the traditional procurement model has delivered positive economic and social outcomes for the citizens of Belarus?
- 2026 If not, what improvements could be made?
- 2027 Do you have, or know of, any statistics showing the historical delivery track record of public capital projects in Belarus, by cost and on-time delivery?
- 2028 Do you have any direct experience in the development or delivery of a PPP project?

- 2029 If so, was that on the public (Government) side, or the private (bidder) side, or both? Please explain your role.
- 2030 To your knowledge, has any PPP activity ever been undertaken in Belarus?
- 2031 If so, what was the experience?
- 2032 To your knowledge, are different levels of Government (local and municipal, as well as national) involved or interested in PPP procurement?
- 2033 How are public services, as opposed to infrastructure, currently provided in Belarus?
- 2034 Are any public services provided to the Government by the private sector, e.g. estate management, facilities management, municipal services?
- 2035 What would you consider to be the three greatest challenges to PPP development in your country?

2.1 Legal & Regulatory Provision for PPP, Including Financial Risks

- 211 Do you know if Belarus has a concessions or a PPP law?
- 212 If so, are PPP contracts designed to be output based?
- 213 Does the PPP law prevail over any other laws dealing with concessions?
- 214 If not, does the Constitution, or other laws, recognise the principles of concession and regulate the granting of concessions in such a way that concessions are legally possible?
- 215 If the country has a Public Procurement Law, is it clear to what extent it applies or not, to the granting of concessions or PPPs?
- 216 Does Belarus have a local public services law for municipalities or local authority concessions or PPPs, and is it clear?
- 217 How do you think the current provision of PPP law reflects on political support for PPP development and the perception of foreign capital investors?
- 218 How many laws currently apply to PPP?
- 219 Can you think of any benefits that a single, clear and attractive PPP legal framework might bring?
- 2110 Have the existing laws been reviewed to ensure they present no barriers to successful PPP development in Belarus?
- 2111 Do the laws / regulations identify the public authorities that have the vires to award concessions and enter into project agreements?
- 2112 Do the laws / regulations make a clear distinction between PPPs and public procurement contracts regarding the transfer of risk to the private sector?
- 2113 Do the laws / regulations make a clear distinction between PPP and licence to operate?
- 2114 Do the laws / regulations make a clear distinction between PPP and privatisation?
- 2115 Can a concession or PPP be granted to a domestic and/or foreign person, or can the shareholders of the PPP Special Purpose Company be domestic and/or foreign?

- 2116 Do the laws / regulations identify the sectors and/or types of infrastructure or services for which concessions or PPPs may, or may not, be granted?
- 2117 Do the laws / regulations provide that a notice of award of a project is to be published and that the public authority maintains records of the selection and award proceedings?
- 2118 Does the public authority have the right to award a PPP without undertaking a competitive process?
- 2119 How does the Government manage unsolicited bids from the private sector?
- 2120 Is the legal basis for private sector participation in PPP clearly defined?
- 2121 Do you think investors are, or would be, comfortable with existing laws and financial regulations which currently apply to PPP?
- 2122 In your opinion, does the judiciary understand PPP?
- 2123 Does the judiciary accept PPP?
- 2124 Do clear procedures exist for acquiring rights of way?
- 2125 Are land and property issues dealt with in a timely way?
- 2126 In most cases would the public sector provide the land for PPP projects?
- 2127 Is planning consent granted for infrastructure developments in a timely way?
- 2128 How many steps does the planning consent process have?
- 2129 How many statutory bodies are involved in the planning consent process?
- 2130 Does a strategic "fast track" planning consent team exist for projects of national significance?
- 2131 If not, do you know if there is any intention to establish one?
- 2132 In a PPP, which party is responsible for obtaining planning consents, licences and approvals?
- 2133 Are the interests of communities, the poor and marginalised protected in the planning process?
- 2134 Are there any provisions limiting foreign participation in investment and/or PPP activity specifically?
- 2135 Are there any barriers to repatriation of profits by PPP investors (T&C)?
- 2136 Has the Government ratified, and does it in practice follow, international conventions on protection of foreign investment?
- 2137 Are there any PPP-specific tax regulations that may deter international PPP investors?
- 2138 Is there a clear system for compensating PPP investors for acts of public sector authorities that change sector-specific economic conditions that were unforeseen during bidding and which are beyond the control of the private sector partner?
- 2139 Is there a clear system for compensating PPP investors for scope changes introduced by the public procuring authority?
- 2140 Is there a clear system for compensating PPP investors for procurements cancelled by the public authority during the bidding process?
- 2141 Are termination rights clearly set out in PPP or major infrastructure contracts?
- 2142 Are all major public contracts subject to EU procurement regulations?
- 2143 Which institutions are, or would be, involved in the PPP process?

- 2144 Which national Government body has, or would have, ultimate responsibility for PPP project approval?
- 2145 Do private sector investors have access to this body and other agencies, prior to procurement?
- 2146 How does PPP, or major infrastructure, delivery governance work?
- 2147 Is the regulatory authority and decision-making hierarchy clearly set out, for each sector of expected PPP activity?
- 2148 Is price regulation sufficiently flexible to allow for major cost changes, e.g. due to scope expansion?
- 2149 Are PPP related laws and regulations for national projects consistent?
- 2150 Do regulations establish clear requirements and oversight mechanisms for project implementation?
- 2151 Is, or would, risk clearly be allocated to different parties according to their abilities to manage them, within a PPP?
- 2152 Has the allocation of risk between the public authorities and the private sector been successful in recent years, for projects of national significance?
- 2153 What do you think are the key factors in the risk rating of a typical PPP project using project finance?
- 2154 Where does "Demand Risk" normally lie, with the public or private sector?
- 2155 Do investors currently have the right to appeal against the decision of a regulator's office?
- 2156 Are property rights enforceable and do they provide proper compensation for expropriation in practice?
- 2157 Do standardised public infrastructure contracts (Standard Form of Contract) exist in Belarus?
- 2158 If so, for which sectors?
- 2159 If not, do you know if there is any intention to develop one?
- 2160 What level of autonomy exists within local authorities or municipalities to initiate PPP projects, which are not considered "strategic" at a national level?
- 2161 How do you see national / local / municipal governments interacting during PPP development, or the delivery of a PPP project?
- 2162 How do public authorities create, or intend to create, the right incentives to attract investment of private capital into PPPs?
- 2163 Are there any general business regulations or practices which might affect the smooth implementation of a PPP?

2.2 PPP Policy Framework

- 221 Is PPP development clearly supported in current central Government policy?
- 222 Does a policy framework exist that identifies PPP as an important tool for the development and delivery of infrastructure?

- 223 Do policy framework documents exist?
- 224 Is there a PPP Model Agreement, or PPP Standard Form of Contract?
- 225 Is PPP policy clearly distinct from privatisation policy?
- 226 Do current procurement procedures accommodate the employment of PPP?
- 227 Institutional Design - does policy clearly allocate authority and responsibility within Government agencies, including oversight?
- 228 Does current policy clearly set out a process for the identification, approval, procurement and implementation of a PPP or major infrastructure project?
- 229 Does current policy dictate transparency in programme and project selection?
- 2210 Are Government ministries encouraged to develop PPP programmes as part of their overall infrastructure investment plans?
- 2211 Does a current PPP pipeline of projects exist?
- 2212 If so, what is the total value, capex, of this programme?
- 2213 Does the current policy framework generate financially viable public proposals?
- 2214 Is project affordability rigorously tested before procurement starts?
- 2215 Has the Balance Sheet treatment of PPP projects been determined by policy makers?
- 2216 Does the policy support a free market, promoting competitive tension?
- 2217 Do stakeholders, including communities, currently have meaningful engagement in major project development?
- 2218 Is Government prepared to offer Viability Funding to support certain PPP developments of national importance?
- 2219 Does policy apply to local and municipal authorities?
- 2220 What factors do you think investors consider when assessing a PPP project?
- 2221 What do you think would be an investor's top priority when assessing a project in Belarus?

2.3 PPP Capacity – Public & Private

- 231 Is there a recognised PPP “Champion” within the Belarusian Government, at ministerial level?
- 232 Are the necessary PPP interaction processes well developed?
- 233 In your opinion, do Government agencies and state bodies currently have sufficient skills and understanding of PPP to successfully develop and deliver a national PPP programme?
- 234 Does the public sector possess any meaningful project, contract, legal, financial or commercial management acumen?
- 235 Are staff capable of routine operations in PPP development?
- 236 Do public agencies and authorities employ proper accounting practices when considering Value for Money and liabilities?

- 237 Do public agencies have asset management skills, e.g. the use of Asset Registers and Asset Backed Vehicles (ABVs) for development?
- 238 In which sectors do you believe public sector personnel to be strongest, and weakest?
- 239 Do public agencies have the requisite skills to conduct feasibility studies and risk apportionment studies, including PPPs?
- 2310 Do public agencies have the required skills to develop a rigorous project appraisal and PPP business case?
- 2311 Do public agencies possess the required methods and criteria for awarding PPP contracts?
- 2312 Do public agencies have sufficient skill to successfully engage the private sector in commercial and PPP negotiations?
- 2313 Do public agencies have contract management expertise? (Types?)
- 2314 Is professional training and documentation available to public agency personnel in order for them to improve their skills set?
- 2315 Do local Government agencies possess the same skills profiles as central Government?
- 2316 Are ministries encouraged to develop in-house PPP expertise rather than continually employ external consultants? If so, how is this achieved?
- 2317 Has central Government supported PPP development through the creation of specialist institutions and advisory units?
- 2318 What would you see as the benefit of a specialist PPP unit?
- 2319 Does the Ministry of Finance have sufficient PPP expertise?
- 2320 Does Belarus have a national PPP Centre of Excellence (CoE)?
- 2321 If so, is its interaction with other Government bodies clearly set out and understood within Government?
- 2322 How many FTEs does the CoE have and is it sufficiently resourced?
- 2323 What sectoral experience do its personnel have?
- 2324 Does the CoE have a projects lawyer within it?
- 2325 Does it contain any ex-private sector personnel with commercial expertise?
- 2326 Is the CoE's role clearly set out in public policy and regulations?
- 2327 Does the CoE have access to PPP international best practice and advice?
- 2328 Do other Government agencies meaningfully interact with the CoE?
- 2329 Is there any intention to establish sector-specific PPP units?
- 2330 In your opinion, does sufficient capacity exist in the Belarusian private sector to help deliver a large scale, multi-sectoral, National Infrastructure Plan?
- 2331 How many large scale construction companies exist in Belarus?
- 2332 What was their annual turnover for the last financial year?
- 2333 How many staff do they currently have?
- 2334 What sectors have they experience of?
- 2335 Do these companies have any management experience of PPP projects?
- 2336 Does sufficient skilled labour exist locally, or would labour immigration be required?

- 2337 Does the local banking sector have sufficient lending capacity to satisfy the debt requirements for such a programme?
- 2338 Does the local financial sector have sufficient expertise to structure complex PPP transactions?
- 2339 How many large Facilities Management (FM) companies exist in Belarus?
- 2340 What sectoral experience do FM companies have?
- 2341 Are there private sector transportation or water operators in Belarus? (List)
- 2342 Is the local professional advisory market experienced in project development and deal transaction? (financial, legal, design, technical, insurance, technology)
- 2343 Have any of these local companies partnered with, or been sub-contracted by, foreign companies, on past projects?
- 2344 Do any of the local companies, banks and firms have access to knowledge exchange with international PPP experienced companies?
- 2345 Do any of these local companies have offices outside Belarus?
- 2346 Do any of these companies have any PPP experience from abroad?
- 2347 Please list the names of the major utilities in Belarus
- 2348 Are these publicly or privately owned?
- 2349 Are these monopolies or does competition exist?
- 2350 What were their respective turnovers in the previous financial year?
- 2351 Are there any energy capacity constraints that would impact negatively on PPP development?

2.4 Project Identification, Selection and Procurement

- 241 Are all public infrastructure programmes identified, appraised, prioritised and approved using Multi Criterion Analysis (MCA)? If not, then how?
- 242 Are all major public infrastructure projects identified, appraised and approved using Cost Benefit Analysis (CBA)? If not, then how?
- 243 How is the National Infrastructure Plan developed?
- 244 Which bodies are involved in project identification?
- 245 How is project identification linked to public budget allocation?
- 246 Who is the senior public person responsible, the “Accounting Officer” for a major project?
- 247 What role does the Ministry of Finance play?
- 248 Are projects ever “bundled” together in order that they can be delivered in a faster and more economic way?
- 249 How is the procurement path, (PPP or traditional), decided upon?
- 2410 Are PPP projects ever promoted simply to ensure that they do not appear on the public Balance Sheet?

- 2411 Is the PPP process, from inception to appraisal, approval, procurement, delivery, operation and end; set out in transparent and well articulated stages?
- 2412 Are there key milestones clearly shown in each of the PPP stages?
- 2413 Do these stages include appropriate external oversight and peer QA reviews?
- 2414 Are Environmental and Social Impact Assessments (ESIA) carried out for each major public infrastructure project?
- 2415 Is optimism bias (OB) calculated for each major public infrastructure project?
- 2416 Is project affordability stress-tested within each major public infrastructure project?
- 2417 How is Value for Money determined?
- 2418 How is risk analysis carried out?
- 2419 How is legal analysis carried out?
- 2420 Are comprehensive Business Case approvals processes, with accurate budgets, in place for PPP projects? If so, please provide details.
- 2421 Who has lead responsibility for speedy approval of each Business Case?
- 2422 Upon PPP project outline approval, is project funding ring fenced within the appropriate Government budget?
- 2423 Are public officials required to declare any conflicts of interest? How?
- 2424 Are local authorities encouraged to participate in the procurement process?
- 2425 What procurement procedure is used, or intended to be used for PPP procurements?
- 2426 Does this reflect the complexity of PPP projects?
- 2427 Does the construction sub-contractor within a PPP procurement; receive appropriate incentives to deliver on time and to budget?
- 2428 Is the construction sub-contractor liable for defects in the works, for a defined period of time?
- 2429 Do procurement regulations for PPP projects unfairly favour certain bidders over others?
- 2430 Is soft market testing carried out before procurement is commenced for each major project to demonstrate that the project is “bankable” and that sufficient bidder appetite exists, in order to avoid failed and costly procurements?
- 2431 Are bidders given sufficient tendering information, including timescales, in a timely way, to permit them to respond to the best of their ability?
- 2432 Are procurement and scoring / evaluation methodologies clearly set out for the bidders from the beginning?
- 2433 Is the project scope / output specification clearly set out from the beginning of procurement?
- 2434 How is a request for advanced works managed in the procurement?
- 2435 Is the payment mechanism clearly set out from the beginning of procurement?
- 2436 How is refinancing treated within public procurement of PPPs?
- 2437 How is gain / pain share treated within public procurement of PPPs?
- 2438 Are the project management and contract management arrangements clearly set out from the beginning of procurement?

- 2439 Is the concept of Most Economically Advantageous Tender (MEAT) applied in the scoring and awarding of all public contracts?
- 2440 At announcement of Preferred Bidder (PB), is a “Standstill” period applied, to allow unsuccessful bidders leave to appeal?
- 2441 Are there fair and transparent mechanisms in place at PB stage to resolve any challenges from unsuccessful bidders?
- 2442 Between PB and Financial Close (FC), which Government agency will lead negotiations for the public sector?
- 2443 Is the public sector held accountable for its decisions? How?
- 2444 Is the public sector Contract Manager part of the public sector team from the beginning of the procurement?

2.5 Post Award; Delivery, Operations and Performance Management

- 251 In Belarus, do you believe that PPP and other major public contracts are properly implemented and effectively monitored by the public sector agencies?
- 252 On contract award, which agency takes lead responsibility for contract management during the delivery and operational phases?
- 253 Is the PPP CoE / Ministry of Finance involved in project implementation, post award?
- 254 Are the public sector contract management costs clearly set out in the Full Business Case, for approval by central Government just before Financial Close and contract award?
- 255 Is a clearly defined Output Specification developed and made available to bidders as part of the bidding process?
- 256 Have Performance Management Systems (PMS) been developed in Belarus, for the operational phase of PPP projects?
- 257 Is a relevant PMS reflected in the Project Agreement (PA) and in the Contract Management (CM) documentation?
- 258 What are the key metrics / Key Performance Indicators (KPIs) used to manage performance of a PPP, or other large public contract?
- 259 What penalties / deductions are applied for non-performance by the private sector partner / supplier?
- 2510 How are variations and claims by the private sector partner normally managed in Belarus?
- 2511 How are conflicts or disputes typically managed within CM arrangements for PPP, concessions or other major public contracts in Belarus?
- 2512 Would you say disputes are settled fairly and speedily?
- 2513 How is “Force Majeure” provided for in Belarusian PPPs or major public contracts?
- 2514 How is “change in law” provided for in PPP or other major public contracts?
- 2515 Does a mechanism exist for sharing the risk of “change in law” events?
- 2516 Has international arbitration ever been employed for such disputes?

- 2517 Have any major public contracts ever been terminated? If so, under what circumstances?
- 2518 In your experience, are private sector partners / suppliers normally paid fully and promptly by Government in the case of major public contracts?

Annex III

List of consultative meetings

1. Public Sector

Representatives of the Ministry of Economy of Moldova

- **Sergiu CIOBANU**, Deputy Minister;
- **Ion LUPAN**, Head of General Directorate for Industrial Policy and completeness;
- **Marian MAMEI**, Head of policy direction and administration of State property,

Representatives of the Public Property Agency and the PPP Unit

- **Tudor COPACI**, General Director,
- **Ion POTLOG**, Head of the PPP Unit.

Representatives of the Ministry of Finance of Moldova

- **Veaceslav NEGRUȚA**, Minister;
- **Victor BARBĂNEAGRĂ**, Deputy Minister.

Meeting with representatives of the State Chancellery

- **Victor BODIU**, General Secretary of the Government.

Representatives of the Ministry of Regional Development and Construction of Moldova (and representatives of large construction companies)

- **Anatolie ZOLOTCOV**, Deputy Minister;
- **Elena BEJENARU**, Chief of General Directorate for architecture, construction and housing;
- **Petru MORARI**, Service of Assistance to Beneficiaries for Social Objects, SABOS;
- **Vasile CHIRICĂ**, General Director “Glorinal” LLC;
- **Victor TALMACI**, President of Federation of Trade Unions Building and Construction Materials “Sindicons”;
- **Gheorghe CĂLUGĂRU**, President Employers Federation of Building and Construction Materials Production.

Representatives of the Ministry of Health of Moldova

- **Viorel SOLTAN**, Deputy Minister;
- **Tatiana ZATÎC**, Head of direction of integrated care management;
- **Lilia GANTEA**, Deputy Head of Department medical insurance, budget and finance;
- **Victor CERNAT**, Director of the Institute of Oncology;
- **Sergiu POPA**, Director of the Republican Clinical Hospital;
- **Oleg HÎNCU**, coordinator / consultant for the hospital, SSAS project.

Representatives of the Ministry of Education of Moldova

- **Nadejda VELIȘCO**, Head of the direction of higher education;
- **Octavian VASILACHI**, Head of the direction sfor econdary education and specialized professional;
- **Tudor COJOCARU**, Head of Analysis, Monitoring and Evaluation.

Representatives of Chisinau Municipality

- **Mihai FURTUNĂ**, Vice Mayor;
- **Nistor GROZAVU**, Vice Mayor;
- **Veronica HERȚA**, Head of Finance Directorate;
- **Gabriela CIUMAC**, Head of External Relations and European Integration;
- **Radu BLAJ**, Head of the Architecture Department;
- **Eugenia CIUMAC**, Head of Economic Analysis Department;
- **Raisa COTOROBAI**, Head of Internal Audit Department;
- **Lilian CARP**, Chief of the Mayor Cabinet,
- **Ion GABURA**, alderman;
- **Ghenadie IVASENCO**, alderman;
- **Veaceslav BULAT**, alderman.

Representative of the Ministry of Information and Communications Technology of Moldova

- **Pavel FILIP**, Minister.

Representative of the Congress of Local Authorities in Moldova

- **Viorel FURDUI**, Executive Director

Representatives of the Ministry of Transport and Road Infrastructure of Moldova

- **Deputy Minister**

2. Private Sector and Industry

Representatives of the National Confederation of Employers of Moldova

- **Leonid CERESCU**, President.

3. Banking Community

Representatives of the Banks Association of Moldova

- **Diana SCRIPNIC**, Adviser to the President.

Representative of commercial Bank "MOLDOVA AGROINDBANK"

- **Serghei CEBOTARI**, Vice President of the Management Committee.

Representative of commercial Bank "Mobiasbanca - Groupe Societe Generale"

- **Nicolae DORIN**, Senior Vice President of Bank.

4. International Organizations

Representative of UNDP in Minsk

- **Alexandru OPRONENCO**, policy specialist.

Representative of the European Bank for Reconstruction and Development

- **Octavian COSTAȘ**, operations leader.

Annex IV

PPP projects in Moldova

Note: One of the main criticisms by the international PPP experts during peer reviewing was that this list of PPP projects in Moldova provided by the PPP Unit in Moldova constitutes a ‘wish list’ of projects, whereby in order to ensure credibility in the eyes of investors, a list of projects (which could be later on incorporated into a National Infrastructure Plan) needs to be backed by pre-feasibility or preferably feasibility studies.

List of past PPP Projects

No	Name of Project	Sector	Status of Project	Level
1	Neighborhood Housing Project of Balti city	Infrastructure	Implementation	Local
2	Tacograph Card System	IT		Central
3	Waste Management of Criuleni city	Waste Management		Local
4	Waste Management of Edinet city			
5	Waste Management of Ștefan Vodă city			
6	Waste Management of Glodeni city			
7	Waste Management of city			
8	Waste Management of Balti city			
9	Waste Management Ceadăr-Lunga of city			
10	Waste Management of Nisporeni city			
11	Waste Management of Climăuți village			
12	PPP Computed Tomography of the IMSP Orhei District Hospital			
13	PPP for Radiology and Diagnostic Imaging centre for the Republican Hospital			
14	PPP for Fitting Central Park of Mereni village	Culture		Local

List of current PPP projects

No	Name of Project	Sector	Status of Project	Level
1	Waste Management of Soroca city	Waste Management	Preparation of tender	
2	Waste Management of Feștelita village			
3	Waste Management of Comrat city			

4	Waste Management of Cupcini city						
5	Waste Management of Anenii Noi city						
6	Waste Management of Căușeni city						
7	Waste Management of Călărași city						
8	Waste Management of Bălți city						
9	Waste Management of Bursuc village						
10	Waste Management of Soltănești village						
11	Waste Management of ii Valea Trestieni village						
12	Waste Management of Boldurești village						
13	Waste Management of Seliște și Păcureni village						
14	Waste Management of Grozești village						
15	Waste Management of Bărboieni village						
16	Waste Management of Marinici și Heleşteni village						
17	Waste Management of Bălăurești village						
18	Waste Management of Ciutești village						
18	Waste Management of Brătuleni village						
29	Waste Management of Pîrîta village						
30	Waste Management of Dubna village						
31	Waste Management of Hincăuți village						
32	Waste Management of Chetroșica Nouă village						
33	Waste Management of Rotunda village						
34	Waste Management of Gașpar village						
35	Waste Management of Trinca village						
36	Waste Management of Cepeleuți village						
37	Waste Management of Brînzei village						
38	Waste Management of Trinca village						
39	Waste Management of Lopatnic village						
40	Waste Management of Alexeevca village						
					Approving of feasibility study		Local

41	Waste Management of Bădragii Noi village			
42	Waste Management of Copnstantinovca village			
43	Waste Management of Hădărăuți village			
44	Water and sewage supply system of Comrat city		Approved by the Government preparing the feasibility study	Local
45	Private Public Partnership of “Multi-storey Car Park” of S.E. “Chisinau International Airport”		Prequalification phase	Central
46	Radioteraphy services for Oncological Hospital	Health	Preparation of tender procedure	Local
47	Ultrasound cabinet of Căzănești Village			
48	Dialysis Service			
49	Rehabilitation Service			
50	Nuclear Imagistic Center			
51	Finishing the unfinished buildings of perinatalogical section of Balti Hospital and and modernize the central city region planning to build objects			Local
52	Construction of the multi-storey apartment buildings	Social Infrastructure		Central
53	13 projects for construction of housing			
54	Developing parking street in Chisinau	Road Infrastructure	Projects proposed for initiation. Will be approved by the Government, in short times	Local
55	Stations and stops Auto			
56	National road M3 Chisinau - Giurgiulesti			
57	Road around villages Slobozia Great Cisla Prut, Giurgiulesti.			
58	Stations and stops Auto			
59	Renovation of Balti International Airport	Airport Infrastructure		
60	Project for revival of cultural heritage (land)	Infrastructure		Central
61	Construction parking lots for heavy vehicles (land)			
62	Construction of commercial objects (land)			
63	Building a ionizing center (land)	Technologies Infrastructure		
64	Reconstruction and fitting a building for microbiology and dissymetry laboratories			
65	Design and construction of the Republican Stadium	Sport Infrastructure		
66	Creating IT park and its subsequent transformation into Smart-city project	IT		
67	SIA implementation intelligent traffic monitoring			
68	Implementation of video-monitoring of road traffic			

Source: PPP Unit at the Public Property Agency within the Ministry of Economy