Public-private partnership as a mechanism for effective management of state property

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Abstract
This article examines the global experience of using public-private partnerships and its impact (positive and negative) on economic growth. Factors influencing sustainable technological progress and state policy on opportunities and economic benefits of Ukraine due to the expansion of public-private partnership in the context of globalization are identified. A methodical set of tools is used, which allows public administration representatives not only to realistically assess the resource potential of state property, but also to be able to effectively manage it in conditions of rapid technology development, limited funding and improbability and / or inexpediency of state property.

The study proves that public-private partnership in Ukraine has not gained much popularity, although changes in all areas of activity encourage a new perception and attitude to public-private partnership through: attractiveness of investments in public sector development for foreign companies and sole proprietors; competitiveness, transparency and the ability to have the best partners among private partners; risk parity that can be placed on the partner, which can reduce it more effectively; profitability, preferences and reduction of the tax burden on business; high quality and prompt project development, thanks to the experience of a private partner in a particular field; the ability of the public partner to control the development and implementation of the project; support for new business ideas, innovative approach and maximizing the experience of private partners.

Keywords: public-private partnership, concession, public sector, private sector (business), private financing models, transit potential.

Introduction
The implementation of large-scale modernization projects in various sectors of the economy requires significant investment resources, a powerful source of which can be private business. At the same time, in the conditions of post-crisis development, business interest in state support is growing, which will reduce the risks of private investment, increase the reliability of investment projects for credit institutions.

The intensity of society's development, due to current trends and challenges, creates new preconditions for establishing communication between the state and business, namely, public-private partnership.

Thanks to this form of cooperation, competition (or even confrontation) is replaced by constructive dialogue and the establishment of partnerships, which can be a new step towards achieving common goals and a guarantee of important changes in the state and society.

In addition, public-private partnerships involve pooling and coordinating efforts,
resources, equal participation of each party, and shared responsibility for performance to address specific challenges.

The purpose of the thesis is to study the nature and problems of public-private partnership in Ukraine and to develop practical recommendations for improving the mechanism of effective management of state property.

**Material and methods**

Theoretical research in the category of “partnership” makes it possible to state that very often the concepts of “partnership” and “cooperation” are identified. Despite the fact that they have much in common, they are not just different concepts, they are different systems both in terms of institutional and organizational structure, and in terms of structural and functional purpose.

The analysis of research on the category of “public-private partnership” proves that public-private partnership is a legally established form of cooperation between the state and the private sector to address socio-economic problems and to achieve the goals in which stakeholders; which is applied, first of all, in relation to realization of investment projects in capital-intensive branches of national economy for which development the state should be responsible.

Based on the study of public-private partnership as a form of partnership, it can be argued that the main factors that determine the form of public-private partnership in specific projects are:

- features of national legislation;
- investment risk allocation schemes;
- experience in organizing contractual relationships necessary for partnership;
- industry affiliation of the project or type of activity;
- determination of the payer(s) for the services of the object and the consequences for him (them) of the chosen form.

The analysis of research on the categories of “partnership” and “cooperation” suggests that cooperation is a process where there is a priority of tactical benefit in the individual strategic goals of the parties, and partnership is a relationship in which the strategic goal takes precedence over individual interests (Andres N. et al., 2009; Delmon J., 2009; Eggers W., Startup T., 2006; Mandri-Perrott C., 2009).

The analysis of research on the category of “public-private partnership” should be noted, it is a legally established form of interaction between the state and the private sector to address socio-economic problems and to achieve the goals in which stakeholders; which is applied, first of all, in relation to realization of investment projects in capital-intensive branches of national economy for which development the state should be responsible.

Results and discussion

Public-private partnership is a set of public relations that are at the junction of public and private law, and are governed by branches of law.

Based on the study of public-private partnership as a form of partnership, it can be argued that the main factors determining the form of public-private partnership in specific projects are the features of national legislation on the scheme of distribution of investment risks; experience in organizing contractual relations necessary for partnership; industry affiliation of the project or type of activity.

The intensity of society's development, due to current trends and challenges, creates new preconditions for establishing communication between the state and business, namely, public-private partnership.

Thanks to this form of cooperation, competition (or even confrontation) is replaced by constructive dialogue and the establishment of partnerships, which can be a new step towards achieving common goals and a guarantee of important changes in the state and society.

In addition, public-private partnerships involve pooling and coordinating efforts, resources, equal participation of each party, and
shared responsibility for performance to address specific challenges.

Partnerships present the parties involved with complex negotiations and specific problems (complex goals, levels of compromise, areas of responsibility, subordination and succession, ways of assessing and sharing success, etc.) that need to be addressed in order to reach an agreement.

Once an agreement has been reached, the partnership is usually enforced in accordance with civil law, and partners who wish to make their agreement clearly articulated and enforceable usually add partnership articles to the agreement.

Given that not everything can be foreseen and written in a partnership agreement, trust and pragmatism are also the key to good governance in the long run.

Today, the main areas of partnership are business, politics (or geopolitics), knowledge, individual trajectories (Table 1).

| Direction               | Features of the direction                                                                                                                                 |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Business                | two or more companies form a joint venture or consortium to: work on a project (for example, industrial or research) that would be too difficult or too risky for one company; join forces to create a stronger market position; compliance with certain rules (for example, in some developing countries, foreigners can only invest in the form of partnerships with local entrepreneurs. In this case, the alliance can be structured in a process comparable to a merger and acquisition agreement |
| Politics (or geopolitics) | in what is commonly called an alliance, governments can work together to achieve their national interests, sometimes against allied governments with opposing interests (World War II, the Cold War, etc.) |
| Knowledge               | accreditation agencies are more likely to rate schools or universities for the quality of their partnerships with local or international counterparts and various other sectors of society |
| Individual              | some partnerships arise on a personal level (when two or more agree to live together), while other partnerships are not only personal but also private, known only to the parties involved |

It should be noted that while a business partnership strengthens mutual interests and accelerates success, some forms of cooperation may be considered ethically problematic, for example, when a politician enters into a partnership with a corporation to promote the latter's interests in exchange for some benefit. Conflict of interest and, as a consequence, the public good may suffer. And although this practice is technically legal in some jurisdictions, it is generally seen as corruption.

Dominant areas and forms of partnership have certain features in the most common counterparties in the world and depend on the legal framework and ethical standards of business conduct of business entities.

Summarizing the above research, we note that before choosing a form of business as a partnership, you should pay attention to the real assessment of your own business and its potential, make sure that the partner has its own resources, ideas, experience, strong team and positive business reputation. prospects for development in the relevant market.

Research by global and domestic institutions shows that there are different classifications of government-business partnerships, and the choice of form of partnership with private capital depends on the goals set by the government / municipality or the body managing the property and acting as a customer when placing an order. from the amount of property rights transferred by the state to the business.

The World Bank, in turn, has its own views on the structuring of public-private partnership projects and the subsequent classification of PPP.
In the case of concession agreements of all types, it is already a question of partial transfer of some property rights from the state to the private partner (usually powers of use, possession and management).

**Table 2 - The main forms of public-private partnership structured by the World Bank**

| The main forms of PPP          | Features of types of public-private partnership                                      |
|-------------------------------|----------------------------------------------------------------------------------------|
| Management and lease contracts| a private company receives in management or on lease terms state-owned for a certain period of time. Investments are made by the state. In the management contract, the state pays for the services of a private partner and bears operational risks. In the lease agreement, the state receives rent from the tenant, and the operational risk falls on the private company. |
| Concession                    | the government gives the private sector the authority to own and use the existing facility under a return agreement. The public sector owns the property (real estate), while the private sector retains the rights to expand it and all improvements made during the concession period. A private company bears operational and investment risks. |
| Green field projects          | the private company builds and operates new production facilities for the period specified in the contract. There are the following types of such contracts |
| Divestiture                   | a private company acquires part of a block of shares in a state/municipal enterprise. The management of the enterprise can be transferred to a private company or remain with the state |

Each project of the state and business, as a rule, is temporary, so it is created for a certain term for the decision of a concrete task.

The main differences of the considered forms of PPP are systematized and are presented in (Table 3).

An integral condition for the normal functioning of a market economy is the constructive interaction of business and government agencies, the methods and specific forms of which may differ significantly depending on their maturity and national characteristics of market relations.

In addition, it should be noted that the state is never free from performing its socially responsible functions related to national interests, and business, in turn, always remains the source and engine of development and increase of social wealth.

Until 2010, seven main types of concession agreements were considered in Ukraine, however, in connection with the inclusion in a number of international agreements of Ukraine of certain provisions of the International Bank for Reconstruction and Development, the World Bank, adaptation of Ukrainian legislation aimed at preparation and accession to the WTO (2009) and the adoption in 2010 of the Law of Ukraine “On Public-Private Partnership” in Ukraine may be concluded:

- concession agreement;
- property management agreement (only if the agreement concluded within the framework of a public-private partnership stipulates investment obligations of a private partner);
- agreement on joint activities;
- other agreements.

In addition, an agreement concluded within the framework of a public-private partnership may contain elements of various agreements (mixed agreement), the terms of which are determined in accordance with the civil
According to Article 3 of the Law of Ukraine “On Public-Private Partnership” the basic principles of public-private partnership include:

- equality before the law of public and private partners;
- prohibition of any discrimination against the rights of public or private partners;
- coordination of interests of public and private partners for the purpose of mutual benefit;
- ensuring higher efficiency of activity than in the case of such activity by a state partner without the involvement of a private partner;
- invariability during the entire term of the agreement concluded within the framework of public-private partnership, purpose and form of ownership of objects that are in state or communal ownership or belong to the Autonomous Republic of Crimea, transferred to a private partner;

The variety of forms of public-private partnership allows extensive use of private capital in solving many problems by the state in the areas of production of public goods and public services, production of natural monopolies.

In these areas, the state cannot give up its presence and uses public-private partnerships to resolve the contradictions between the limited capabilities of the state budget and the need to

| Form of PPP | Features of the form | The subject of the contract between the state and private business | Form of ownership of property (current / being created) |
|-------------|----------------------|---------------------------------------------------------------|-------------------------------------------------------|
| State contract with investment obligations of private business | Co-financing: +, State: +, Construction: + | Technical re-equipment or modernization: + | Designing: + |
| Lease | | State: +, Private: | |
| Concession | State: +, Private: +, Share capital: + | Construction: +, Technical re-equipment, modernization: + | Designing: + |
| Participation in capital | State: +, Private: | Production sharing agreement: +, Technical re-equipment: + | |
| Contracts that include different types of work and property relations | State: +, Private: | | |

- recognition by public and private partners of the rights and obligations provided by the legislation of Ukraine and determined by the terms of the agreement concluded within the framework of public-private partnership;
- fair sharing between public and private partners of the risks associated with the implementation of public-private partnership agreements;
- determination of a private partner on a competitive basis, except as provided by law.
invest capital to ensure the reproduction and development of strategic and social significance of these areas.

It should be noted that from the first version of the Law “On Public-Private Partnership” (2010) to the existing one, significant changes have taken place (mainly in 2015 and 2020), both in terms of scope and scope, project, property rights, etc.

Yes, according to Art. 4 of the Law of Ukraine "On Public-Private Partnership" PPP is used in various areas of economic activity, taking into account their specific features (Fig. 1).

![Diagram of areas of application of public-private partnership](image)

**Figure 1 - Areas of application of public-private partnership according to the Law of Ukraine "On Public-Private Partnership"**

*Source: suggested by the author*

In these areas, the state cannot give up its presence and to resolve the contradictions between the limited capacity of the state budget and the need to invest capital to ensure the reproduction and development of strategic and social importance of these areas uses public-private partnership in various areas of economic activity, their specific features.

Thus, for the period from 2010 to 2020, mechanical engineering remained a priority for the state; water collection, purification and distribution; health care; tourism, recreation, recreation, culture and sports; ensuring the functioning of irrigation and drainage systems; production, distribution and supply of electricity. In 2015 and 2019 (mostly) the priorities of the state changed and, in accordance with the law, excluded such areas as prospecting, exploration of mineral deposits and their extraction; production, transportation and supply of heat and distribution and supply of natural gas;
construction and / or operation of motorways, roads, railways, runways at airfields, bridges, overpasses, tunnels and subways, sea and river ports and their infrastructure.

The vector of other spheres has also changed:
- waste treatment (specified for waste management, except for collection and transportation);
- real estate management (specified for the production and implementation of energy-saving technologies, construction and overhaul of residential buildings, completely or partially destroyed as a result of hostilities on the territory of the anti–terrorist operation);
- installation of modular buildings and construction of temporary housing for internally displaced persons).

The scope of application of public-private partnership in the field of social services, management of a social institution, institution has been expanded; educational and health services (donation of blood and / or blood components, procurement, processing, testing, storage, distribution and sale of donor blood and / or blood components); management of architectural monuments and cultural heritage.

It should be noted that according to Article 7 of the Law of Ukraine “On Public-Private Partnership” the transfer to a private partner of a public-private partnership, including its further reconstruction, restoration, overhaul and technical re-equipment by a private partner, does not transfer of ownership of this object to a private partner and does not terminate the right of state or municipal ownership of such object, and after the termination of the relevant agreement in the manner prescribed by the agreement concluded in public-private partnership, such objects are return to the state partner.

Regarding the general understanding of certain provisions of the status of objects of public-private partnership, it should also be noted that:

- the objects of public-private partnership are reflected on the balance sheet of the private partner and are separated from his property, and the private partner applies separate accounting to such property;
- the objects of public-private partnership cannot be the objects in respect of which the decision on privatization has been made;
- public-private partnership objects cannot be privatized during the whole term of public-private partnership implementation;
- the use of land for public-private partnership is regulated by Article 8 of the Law of Ukraine “On Public-Private Partnership” and must comply with regulations of Ukraine.

The main sources of public-private partnership funding according to Article 9 of the Law of Ukraine “On Public-Private Partnership” are the financial resources of the private partner; financial resources borrowed in the prescribed manner; funds from the state and local budgets and other sources not prohibited by law.

Summing up the study of the state of regulatory and legal support of public-private partnership in Ukraine, we note that:

During the period of the Law of Ukraine “On Public-Private Partnership” (2010-2020) there were significant changes (mainly in 2015 and 2019), which relate to the scope, form, object, property rights, etc.; cooperation between partners can be carried out within different structures, with different competence, with different set of tasks and sources of funding;
- there are a large number of different models of public-private partnership for the purpose of qualitative economic and social changes.

Among the forms of public-private partnership represented in Ukraine are also corporatization (corporatization) and creation of joint ventures, and the degree of freedom of the private sector in making administrative and economic decisions is determined by its share in the share capital (Table 4).
Table 4 - Forms of public-private partnership in Ukraine

| Forms of PPP                                      | The average term of the agreement | Provision of services or management | Provision of working capital | Making a net profit or covering net losses | Long-term financing | Possession of assets legally | Sectoral planning and regulation of services |
|--------------------------------------------------|-----------------------------------|------------------------------------|-------------------------------|-------------------------------------------|---------------------|-------------------------------|---------------------------------------------|
| Activation and financing of the private services market | Unlimited term                   | S*                                 | S/P                           | S                                         | S/P                 | S                            | S                                           |
| Service contract                                 | 2-3 years                         | P                                  | S                             | S                                         | S                   | S                            | S                                           |
| Management contract                              | 2-5 years                         | P                                  | S                             | S                                         | S                   | S                            | S                                           |
| Leasing                                          | 7-15 years                        | P                                  | P                             | P                                         | S                   | S                            | S                                           |
| Build-Own-Transfer (BOT)                         | 20-30+ years                      | P                                  | P                             | P                                         | P                   | P                            | P                                           |
| Build-Own-Operate (BOO)                          | 20-30+ years                      | P                                  | P                             | P                                         | P                   | P                            | S                                           |
| Concession                                       | 20-30+ years                      | P                                  | P                             | P                                         | P                   | P                            | S                                           |
| Alienation and sale of assets                    | Unlimited term                   | P                                  | P                             | P                                         | P                   | P                            | S                                           |

The dynamics of change in the number of projects concluded and implemented in Ukraine on the basis of public-private partnership for 2012-2020 states the continuity of the existing trend: contracts are concluded, but most of them are not implemented (Fig.2).

Figure 2 - Dynamics of change in the number of projects concluded and implemented in Ukraine on the basis of public-private partnership for 2012-2020

Source: Ministry of Economic Development, Trade and Agriculture of Ukraine
The most active among the projects related to water collection, treatment and distribution is Mykolaiv region; construction and / or operation of highways, roads, railways, runways at airfields, bridges, overpasses, tunnels and subways, sea and river ports and their infrastructure is the Odessa region; production and transportation of natural gas is the Transcarpathian region.

This situation is due to the fact that the decisions on the feasibility of public-private partnership projects in previous years did not have a feasibility study on the effectiveness of such projects in the form of concessions in this regard, it was not possible to assess the financial capacity of the concessionaire. to implement the project (Lviv-Brody project, where the concessionaire turned out to be insolvent and it was impossible to replace it).

Among the concluded public-private partnership projects in Ukraine for 2012-2020 the vast majority belongs to the concession (Fig.3).

![Figure 3](image-url)

**Figure 3 - Dynamics of change in the number of projects concluded and implemented in Ukraine on the basis of public-private partnership for 2012-2020 by forms**

*Source: Ministry of Economic Development, Trade and Agriculture of Ukraine*

According to the Ministry of Economic Development, Trade and Agriculture of Ukraine as of 01.01.2021 192 agreements have been concluded on the basis of public-private partnership, of which 118 agreements have not been implemented and are not fulfilled and 35 agreements have been terminated or expired.

Among the agreements that are not implemented (in 2019) 153 (of which: water collection, treatment and distribution (30 projects); production, transportation and supply of heat (6); construction and operation of highways, roads, bridges, overpasses, tunnels, sea and river ports and their infrastructure (16), tourism, recreation, culture and sports (1), search, exploration and extraction of minerals (1), waste treatment (112), production, distribution and supply of electricity (5), real estate management (2) and others (13), 35 agreements are terminated or expired, 118 agreements are not fulfilled.

At the same time, a significant number of agreements were concluded in Poltava region - 113. Among other regions it is worth noting...
Mykolaiv – 15, Odessa – 14 and Kyiv – 11. Among the 52 agreements on the basis of public-private partnership that are being implemented, the vast majority covers Mykolayiv, Odesa, Kyiv, Donetsk and Lviv regions.

Most active projects are implemented in the field of sewerage and water supply (50%), transport infrastructure (22%) and production, distribution and supply of electricity (7%) (Fig.4).

![Figure 4 - Structure of public-private partnership projects by areas (spheres) as of January 29, 2021, %](source)

In this regard, it should be noted that the World Bank, which has its own methodology for accounting for private investment projects, proves that in Ukraine, since independence, only 20 full-fledged public-private partnership projects have been implemented for a total of 2271.3 million USD, among which the most attractive sectors for attracting private funding were electricity (75% of all projects), seaports (12%), water supply and sewerage (9%), information and communication technologies (4%).

Conclusions

Based on the analysis of public-private partnership in Ukraine, it can be argued that for the implementation of public-private partnership in Ukraine formed an institutional environment that has elements of hierarchy, where each level of hierarchy has its participants, represented by regulatory institutions that determine the rules of relations. rights and obligations of participants. But, despite the positive developments, the state and pace of project implementation is unsatisfactory. One of the main reasons for this state of affairs is the lack of trust in the state as a business partner due to the ongoing instability
of public finances, variability of legislation, high level of corruption, including at the middle level, which is responsible for public-private partnership projects.

Thus, according to the World Bank in Ukraine, despite the developed regulatory framework, public and non-profit institutions to promote public-private partnership infrastructure development, there is almost no experience of successful implementation of large public-private partnership projects compared to leading countries.

Summarizing the above research, we note that before choosing a form of business as a partnership, you should pay attention to the real assessment of your own business and its potential, make sure that the partner has its own resources, ideas, experience, strong team and positive business reputation. prospects for development in the relevant market.

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