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# KYIV INVESTMENT AGENCY

ASSESSMENT AND RECOMMENDATIONS FOR AN  
OVERSIGHT FUNCTION

**July 2015**

This publication was produced by CARANA Corporation for review by the United States Agency for International Development. It was prepared by Danilo Cruz-DePaula and Jeanne Wehlau.



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This report does not necessarily reflect the views of the United States Agency for International Development or the United States Government.



# CONTENTS

- Contents i
- List of abbreviations iii
- Executive summary 4
- 1. Introduction 10
  - 1.1. Purpose and scope of the consultancy 10
  - 1.2. Ukraine and Kyiv city context 10
- 2. The Kyiv Investment Agency 12
  - 2.1. Vision for Kyiv and for KIA 12
  - 2.2. KIA within KMDA 13
  - 2.3. KIA structure and operations 14
    - 2.3.1. Mandate 14
    - 2.3.2. Organization 15
    - 2.3.3. Operational assessment 15
  - 2.4. Regulatory framework 23
    - 2.4.1. KIA legal authority 23
    - 2.4.2. Main legislation regarding investment tendering 23
    - 2.4.3. Legislation related to internal audit 26
- 3. The investment tendering process and oversight 28
  - 3.1. Current investment tendering process 28
  - 3.2. Observations / recommendations on the investment procedures 30
    - 3.2.1. Operational responsibility for the procedures 30
    - 3.2.2. Post-award assistance by KIA 30
    - 3.2.3. Efficiency and timelines 31
    - 3.2.4. Project initiation and transparency 31
    - 3.2.5. Contravention of best tendering practice 31
  - 3.3. Oversight functions 34
    - 3.3.1. Kyiv’s Department of Internal Financial Control and Audit 34
    - 3.3.2. State Financial monitoring Services 36
    - 3.3.3. Department of Municipal Property 36
    - 3.3.4. External audit 36
- 4. Communications and Outreach 37
  - 4.1. Reform outreach and feedback 38

|        |   |    |
|--------|---|----|
| 4.1.1. | Recommendations on reform outreach and feedback   | 38 |
| 4.1.2. | Continual outreach  | 39 |
| 5.     | KIA Oversight Unit  | 41 |
| 5.1.   | Mandate   | 41 |
| 5.2.   | Functions   | 41 |
| 5.3.   | Composition and staffing  | 42 |
| 5.3.1. | Advisory board  | 42 |
| 5.3.2. | Technical staff   | 45 |
| 5.3.3. | Stakeholder feedback/grievance and complaints mechanism   | 47 |
| 5.4.   | Operational costs   | 47 |
| 5.5.   | Ensuring the oversight unit's independence  | 47 |
| 5.6.   | Revisiting the mandate and organizational placement   | 48 |
| 5.6.1. | Packaging the oversight unit for donor support  | 49 |
| 5.6.2. | In conclusion   | 49 |
|        | Annex I. Best international practices for auditing  | 50 |
|        | Annex II. Terms of reference for oversight unit   | 58 |
|        | Annex III. Detailed review of the draft investment tendering regulation                         | 70 |
|        | Annex IV. Individuals interviewed   | 71 |
|        | Annex V. Estimated annual costs for proposed oversight unit                                     | 73 |
|        | Annex VI. KIA investment oversight consultancy presentation: Major findings and recommendations | 74 |

# LIST OF ABBREVIATIONS

|       |  |
|-------|--|
| CEO   | Chief Executive Officer                              |
| CSO   | Civil Society Organization                           |
| Dco   | Deloitte Consortium                                  |
| DEI   | Department of Economy and Investment                 |
| DIFCA | Department of Internal Financial Control and Audit   |
| IIA   | Institute of Internal Audit                          |
| KAU   | Kyiv Oversight Unit                                  |
| KDMA  | Ukrainian acronym for Kyiv City State Administration |
| KIA   | Kyiv Investment Agency                               |
| KPI   | Key Performance Indicators                           |
| NGO   | Non-Governmental Organization                        |
| PPP   | Public Private Partnership                           |
| PSIAS | Public Service Internal Audit Standards              |
| USAID | United States Agency for International Development   |

# EXECUTIVE SUMMARY

**Background**

The Maidan movement and subsequent events elevated anticorruption issues to the forefront of Ukrainian consciousness. In this context, the Kyiv Mayor’s Office requested assistance from USAID to assist the city, and specifically it’s Kyiv Investment Agency (KIA), in developing transparent, fair, and predictable rules for all investors to reduce opportunities for corruption, while maximizing confidence in city practices for investors. USAID selected CARANA Corporation to fulfill this request through this consultancy. Key consultancy tasks include:

- Review KIA’s current organization, processes, and investment oversight
- Review relevant legislation impacting KIA’s investments and oversight functions
- Discuss issues with city, KIA, investors, and other stakeholders
- Propose the structure for an oversight function including needed staff, terms of reference (TOR), and operational budgets
- Develop a communications strategy for the oversight unit.

Ukraine today faces massive economic and financial challenges, as does the city of Kyiv. In March, Moody's Investors Service downgraded the city’s ratings and significant debt. If Kyiv does not restructure its debt, repayments could approach half of 2014 operating revenues. For Kyiv, this alarming situation magnifies the need to partner with the private sector to fund its capital investment needs. Accordingly, as an investment promotion agent for the city, KIA plays a crucial role in bringing private capital to supplement limited city budgets.

**The Kyiv Investment Agency**

KIA is a 60-plus employee, city enterprise which has been given a much more prominent role under the current mayor. Its aim is to be a “single window” where international and national investors, wishing to enter into public-private partnership (PPP)-type projects for socially significant and renovation projects, can be guided through the investment tendering process and not have to deal with the myriad of city entities that must provide approvals. KIA does not control the investment tendering process, which is the responsibility of these entities. Nearly 90% of its staff has joined KIA only since August 2014.

To date, KIA has had some limited success. In 2014 it closed seven projects with a value of approximately UAH 1 billion (roughly US\$50 million at average exchange rates). It has concluded three additional projects in 2015, with

numerous investments and tenders in the pipeline.

However, KIA is generating a limited amount of deal flow for PPP-type projects, which are its mandate. There are several reasons for this. One is a lack of clear priorities and changing investment targets. In addition, it is often difficult to “monetize” social investments that will permit investors to earn a reasonable return.

KIA’s strengths include a dedicated staff, led by a reputable CEO with extensive private sector background, and strong support from city management, especially the Mayor. KIA documents also cite specific examples of where the Agency has made important progress during the past year. For example, there are reportedly now an average of three bidders per tender, compared to only one in the past. KIA also cites a significant increase in prices from property sold by the city from US\$600/0.01 ha to US\$2,000.

Staff and stakeholders interviewed, however, acknowledged that the Agency still faces significant challenges which are limiting its efficiency. These include:

- Unclear priorities, with investment targets reportedly often shifting
- A crisis or “top of the inbox” management *modus operandi* which does not permit employees to focus on longer-term goals
- Employees do not have clearly defined terms of reference (TOR) or specific targets/benchmarks
- The inability to offer competitive salaries makes retaining and recruiting difficult
- The geopolitical environment is significantly limiting international investor interest.

There are ongoing efforts to address these issues. A consortium led by Deloitte and local partner Talent Advisors is working on a re-organization for KIA, developing TOR for staff, developing a better bonus system, and developing specific performance benchmarks for the Agency.

***The tendering process, and the oversight and regulatory framework***

KIA has developed a new Draft Regulation to oversee the investment tendering process. It makes the process more transparent by describing all steps involved. It also seeks to reduce the amount of time required to conclude a tender from to 90, from as long as 500 days in the past. However, the 90-day target does not appear realistic. Some steps are supposed to be concluded in unrealistic timeframes while other steps do not have any deadlines. The regulations also do not always follow best international practices and are unclear in areas such as the role of procedures in the initial review of bids.

The city government administration’s (KMDA’s) Department of Economics and Investment (DEI) is responsible for the investment tendering process, as well

as other city investment mechanisms (e.g., auctions). Auditing and financial oversight rests with the Financial Control and Internal Audit Department (DIFCA) — although some city enterprises and agencies have their own auditing units. DIFCA was restructured in 2014 and appears dynamic and doing a good job, with a limited staff. Because of these limitations, however, it only focuses on large transactions and investments, and thus does not cover much of KIA supported investments. KIA recently underwent its first independent audit in memory. Although it received a negative determination, in large part because of past practices, it is a step in the right direction.

### **Proposed Oversight Unit**

The report recommends the establishment of an Oversight Unit either within KIA or within the Office of the Head of the KMDA (Mayor), depending on its scope. The Unit will consist of an Advisory Board and a technical/support staff led by an Executive Director. Its mandate would be to provide credibility to the investment process and oversee and ensure that all investment processes are designed, clear for all participants and potential investors, and implemented in accordance with established law and best international practices, including verifying that investors have met their obligations. With a broader mandate, the Unit would be a reform champion for the city, promoting continuous, specific transparency mechanisms such as e-governance, online budgets, and tendering, as well as online land registry and asset inventories.

The Oversight Unit will have three primary functions.

1. The Advisory Board will oversee KIA's operations and advise the Mayor, city management, and KIA managers, and dialogue with stakeholders on reform and investment issues.
2. Ongoing performance audit and monitoring and evaluation of investment projects, led by 3-4 professionals under the Executive Director. While the Unit would have the ability to undertake financial audits, its focus would be on reviews that ensure that regulatory procedures are followed in the investment process and that it is transparent.
3. Capacity to receive investor and stakeholder grievances and provide follow-up to the planned solutions.

The proposed nine-member Advisory Board will have a diverse composition and will work closely with KIA and the Mayor and his office. It will become the public face of the city's investment process and, if the Oversight Unit assumes a broader role, it will also be the champion of the city's reform efforts. It will consist of distinguished individuals and representatives of leading bodies that will commit their prestige and expertise to KIA and the city to ensure investors, as well as the public at large, that there is transparency in investment operations.

The proposed composition consists of:

- **Representatives of international and local business associations (3).** Recommended: (1) AmCham, (1) European Business Association, and (1) A Ukrainian business association or federation (to be defined).
- **Civil society (2).** To be defined, but there are numerous candidates, e.g., Reanimation Package of Reforms Group. There is a range of civil society organizations that follow city procurements and investments.
- **Major accounting/auditing, management consulting, or e-solutions firms (2).** Selected on the basis of commitment to organization.
- **Notables (2).** The Board should have a minimum of two and possibly three distinguished individuals from outside Ukraine. The ex-mayor of Budapest has been mentioned in several conversations. Ex-mayors from the Baltic countries, as well as from other Central and Eastern European countries could be excellent. Well known, reputable international business persons could also serve as ideal candidates. This number could be expanded to three, if the city representative is not included as a formal Board member.
- **Investigative journalist (observer).** There are precedents for having a journalist in such an oversight function in the U.S. and elsewhere.

The report recommends a selection process for the Board, led by a Selection Working Group comprising international donors, representatives of KMDA, KIA, and the Mayor's Office.

Beyond the Board, the Oversight Unit will be lean, consisting of 4–6 professionals. Its Executive Director should be an experienced professional with a minimum of 10 and preferably 15 years' experience in the private sector and government who has the interpersonal skills to work closely with senior KMDA and KIA staff and the Advisory Board and is passionate about promoting the reform process. The Board will work on a pro bono basis, with funding for travel for its "notables" provided through sponsorships from the countries they represent. We estimate that it could operate with a cost of approximately UAH 1.5 million (\$67,000) per annum.

As noted above, depending on its mandate, the Oversight Unit could be attached to KIA or to the Office of the Head of the KMDA (Mayor's Office). We recommend a much broader mandate than simply KIA, for the following reasons:

- *KIA does not control the investment tendering process.* An Oversight Unit focused on KIA's operations would be limited to overseeing its role as an investment agent. KIA cannot be effective as an "island of excellence in a sea of turbulence" over the long term.
- *KMDA faces many challenges and must respond to many opportunities.* There are many ongoing reforms beyond investment tendering —

from e-government initiatives to procurement reform — that could benefit from the guidance of the proposed Advisory Board as well as the technical staff.

- *It may be easier to recruit “notables” with a broader mandate.* Moreover, the advice and guidance that these notables and other Board members may provide, may extend well beyond KIA.
- *KIA needs to focus on its restructuring.* At this time, KIA is hard pressed to implement its own restructuring efforts while it responds to immediate tasks. Within this environment, it is difficult to envision KIA having the time or the resources to absorb another unit.
- *KIA’s future role is not clear.* Given the current investment climate and limited foreign investor appetite, KIA may have to reassess its mandate in the future. In some ways, it is already doing this, with increasing non-investment tasks. If KIA is undertaking a relatively small number of PPP-type projects, an Oversight Unit may not be fully warranted.

### **Summary of Major Recommendations**

Highlighted below are the major recommendations made in the report.

- 1. Make an investment in implementing needed structural changes.** While there has been progress in some investment processes during the last year, KIA has been caught in the dilemma of having to delay structural reform in order to focus on immediate needs and pressures. Not implementing structural changes such as reorganization, however, will only hurt its efficiency and create a vicious circle of poor performance, which in turn generates greater pressures. KIA should prioritize and immediately implement those recommendations it accepts from this report and those provided by the Deloitte Consortium, including TOR and key performance indicators (KPIs) for all staff.
- 2. Create the position of Chief Operating Officer (COO).** KIA needs a strong COO to focus exclusively on implementation and oversight of day-to-day work. The demands faced by the CEO in dealing with the Mayor’s Office, priority investments, and emergencies do not permit him to have this focus. This is especially important when the CEO is working on a full time basis.
- 3. Aggressively analyze and implement ways to outsource as much as possible KIA’s investor facilitation role.** This might entail, for example, creating a private or city-owned enterprise that investors can contract with directly to walk them through the city bureaucracy in the tendering process. This would reduce KIA’s staffing needs, reduce costs, and allow for greater salaries for KIA staff who would focus on “sell” side issues and on the problems that only city employees can.
- 4. Address the bonus system.** With KIA management, the Deloitte Consortium is exploring numerous ways to boost salaries and overall

remuneration and make the current system more transparent.

- 5. Develop annual and quarterly action plans to prioritize investment targets.** As noted above, priorities for KIA staff are not always clear, reportedly resulting in time and human resource investment in projects that are not completed. The plans need to come from the Mayor's Office, with KIA assistance.
- 6. Create an Investment Initiation Group to prioritize work and provide greater transparency.** The group could be chaired by the head of KIA's Investment Department, private sector representative(s), the Mayor's Office, and KMDA units managing property. An important objective for the group is to simultaneously analyze city priorities, supply (city assets, priorities) and demand (investor interest and/or estimated ROI), and prioritize KIA transactions. A starting point for the Group would be the Annual and Quarterly Plans coming from the Mayor's Office.
- 7. Review carefully the new Draft Regulation before approval.** While it is a major improvement over past practices, it still requires a thorough legal, transparency, and efficiency review.
- 8. Reassess the current investment tendering process.** This is an issue beyond KIA. There are many ways, however, in which the current process could be improved. For example, KIA could play a role in obtaining preliminary approvals from KMDA departments so that when a tendering winner is announced, much of the post-tender approval process has been initiated and perhaps in some areas completed.
- 9. Implement the Institutional Corruption Risk Management Tool for the investment tendering process and/or for KIA operations.** The tool consists of an assessment of potential corruptive practices in different steps or processes in institutional operations. It is being used effectively by USAID's FINREP-II project in assessments of two Ukrainian government institutions. It could prove extremely useful in identifying potential problem areas.

In many ways, the city of Kyiv is on the front lines in creating a new, transparent, Europe-oriented Ukraine. The country, and the city, faces many difficult challenges under the current geopolitical environment and Russian aggression. Ukrainians and Kyivians have nonetheless demonstrated a spirit of sacrifice and endurance that is truly admirable. This spirit, however, is only sustainable as long as citizens feel that its government is moving forward and committed to changing the past and its corrupt practices. What happens in Kyiv draws national and international attention and, consequently, the city's reform process has an impact across the country. For this reason, an Oversight/Reform Unit that can catalyze needed changes will be an instrumental part of the country's future.

# I. INTRODUCTION

## I.1. PURPOSE AND SCOPE OF THE CONSULTANCY

In 2014 the Kyiv Mayor's Office requested assistance from USAID to assist the city, and specifically its Kyiv Investment Agency ("KIA" or "the Agency"), in developing transparent, fair, and predictable rules for all investors to reduce opportunities for corruption, while maximizing confidence in city practices for investors. USAID agreed to assist KIA in developing an oversight function, which if successful, may be replicated at the city level, beyond its current routine auditing functions. Key consultancy tasks include:

- Reviewing KIA's current organization, processes, and investment oversight
- Reviewing relevant legislation impacting KIA's investments and oversight functions
- Discussing issues with city, KIA, investors, and other stakeholders
- Proposing the structure for an oversight function including needed staff, terms of reference (TOR), and operational budgets
- Developing a communications strategy for the oversight unit.

Upon initiating its work, the consultancy team learned that a consortium led by Deloitte, local partner Talent Advisors, and Ward Howell (hereinafter the Deloitte Consortium or DCo) has been engaged in assisting KIA in assessing its organizational structures, procedures, processes, and overall staffing needs, including developing TOR for KIA staff. In addition, it played a key role in developing new draft tendering regulations which directly impact KIA's work. The team met numerous times with DCo members who shared much of their analysis to date.<sup>1</sup> This report does not aim to duplicate their work to date, especially regarding its proposed KIA reorganization. It does address reorganization issues relevant for KIA's oversight function.

## I.2. UKRAINE AND KYIV CITY CONTEXT

The Maidan movement and subsequent events elevated anticorruption issues to the forefront of Ukrainian consciousness. While corruption was recognized as rampant, the ousted administration had plundered Ukrainian assets far beyond what was even imagined, through fraudulent schemes, rigged procurements, and many other unlawful practices. Perhaps more damaging for Ukraine's future, the Yanukovich regime — and others that preceded it since the country's independence — created an ecosystem that legitimized corrupt financial transactions by making it part of the way business is done in Ukraine, in many ways institutionalizing corruption. As the country's capital and largest city, Kyiv was not exempt from these practices. Procurements, and access to city services, its assets, and its wealth, were managed through non-transparent procedures, insider-dealing, and other practices which robbed Kyivians of the opportunity to have a better, more livable city.

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<sup>1</sup> "Stage 2" of the Consortium's work related to implementation of Stage 1 (primarily analyses) and was not shared with the CARANA team, nor to date with the KIA team, as there are ongoing discussions about payments to the Consortium by the Renaissance Foundation of the Soros Group which is financing this effort. The Consortium believes that the issue will be resolved in the near future (sometime in July 2015).

The immediate response following Yanukovich's ouster and the Maidan movement was an urgent call to action to clean up government, led by both civil society organizations (CSOs) and the new administration. Groups such as Reanimation Package of Reforms (RPR) and many other CSOs have worked with the new government — in many cases pushing it to pick up the pace and deepen the reforms. At the national level, the government has created numerous bodies and agencies to lead anti-corruption efforts such as the Anti-Corruption Bureau (which reportedly will have over 700 agents to investigate anti-corruption cases) and the Anti-Corruption Agency. A national Lustration Law will prohibit the participation in government of thousands of individuals that participated in the upper echelons of the past regime. Judicial reforms are moving forward, albeit slowly, with efforts led by groups such as the Restoration of Trust in the Judiciary commission.

There is progress, but the record is mixed, at best. There is a growing malaise among a wide spectrum of Ukrainians that the reform effort is not moving fast enough, that momentum is dying, and worse, that true commitment is lacking. There have been no major anti-corruption prosecutions. The two national level agencies are still not operational. Moreover, stories of "old" corrupt practices continue, both at a national level and in Kyiv as well. This is not to minimize the gargantuan challenge of transforming an embedded system going back decades, in the relatively short time of just over a year. It is a daunting task to accomplish while facing an economic and financial crisis aggravated by the aggressions of a neighbor who fears a prosperous, Europe-oriented Ukraine.

Ukraine today faces massive economic and financial challenges. The economy shrank by an estimated 8% in 2014. Public debt has increased to alarmingly high levels, while the country must spend over US\$5 million per day on the war effort in the east. Inflation is expected to reach close to 30% in 2015. Foreign currency reserves have plummeted to dangerous levels.

The situation is not much different for Kyiv's finances. In March, Moody's Investors Service downgraded Kyiv's ratings to Ca from Caa3, with a negative outlook. The main driver of the downgrades is the likelihood of private creditors incurring substantial losses from debt restructuring and the increase in systemic risk stemming from deterioration of the Ukrainian government's credit profile. The City Council recently filed with Ukraine's Ministry of Finance its intention to restructure its foreign currency bonds (\$250 million and \$300 million) due in 2015 and 2016. If Kyiv does not restructure its debt, it will face significant refinancing risks, as repayments of public debt due in 2015 represent over 50% of Kyiv's direct debt, approximately 48% of 2014 operating revenues. For Kyiv, this alarming situation magnifies the need to partner with the private sector to fund its capital investment needs.

In sum, augmented by the financial crisis and drops in citizens' incomes, there is a growing concern that time is running out. If citizens are asked to sacrifice and endure hardships, they must see a real transformative change in the way their government operates.

## 2. THE KYIV INVESTMENT AGENCY

KIA is a municipal enterprise, established in 1996 under the Civil and Commercial Codes of Ukraine. Statutorily, KIA is directly subordinated to the Department of Economy and Investments (DEI) of the executive body of the Kyiv City Council (Kyiv City State Administration or KMDA). In practice today, the Agency reports directly to the Mayor of Kyiv. This issue is addressed in Section II.E below, Regulatory Framework.

KIA has not been a consistently active investment agent for the city in its history. Beginning in 1999, corruption scandals surfaced related to the building of kiosks in the city in which KIA was directly involved. Moreover, especially under the Yanukovich regime, the city undertook many investment transactions outside the normal investment process and without KIA's participation.

Under Mayor Vitali Klitschko's leadership, however, KIA's role has advanced significantly towards becoming the lead investment agent for the city, as well as the spearhead of overall investment-related reforms. Since August 2014, the 60-plus person agency has replaced 90% of its staff and has been mobilizing to undertake its new role.

### 2.1. VISION FOR KYIV AND FOR KIA

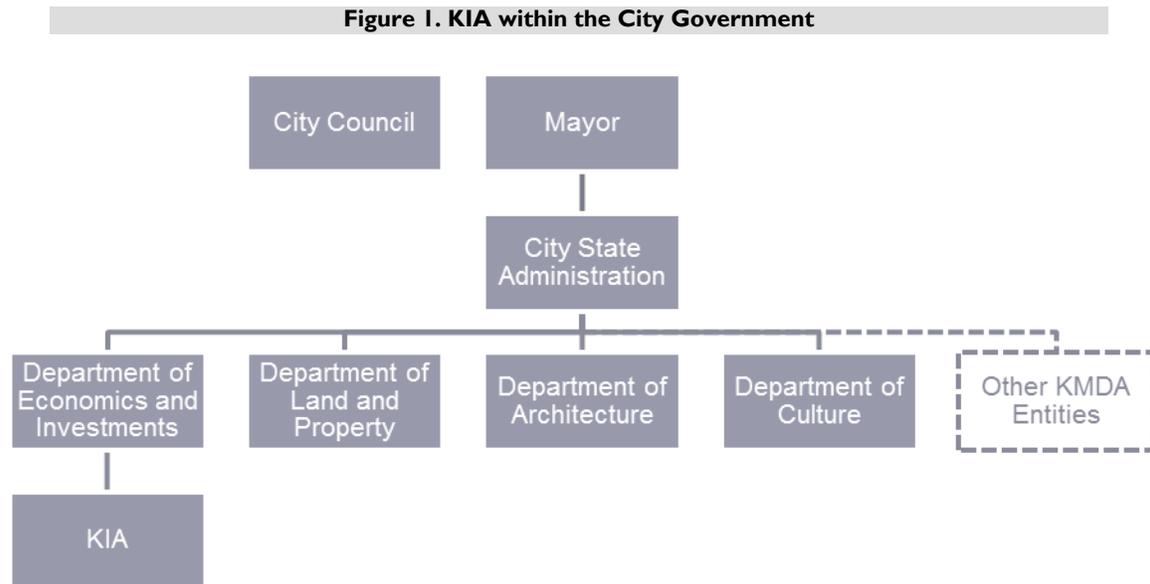
In 2011, Kyiv developed a major strategic plan through 2025, with assistance from the World Bank, the Boston Consulting Group, and other leading companies and organizations. Considered an exemplary effort of citizen input, the plan involved direct feedback from thousands of individuals. Unfortunately, the plan has not been executed as intended. While the introduction to the plan indicates that its execution will be characterized by "transparency, constantly monitored, and made available for public inspection," until recently, this was simply a commitment not kept.

During the last year the city has undertaken initiatives to maximize transparency in city services and the use of resources which are in line with the Mayor's vision of making Kyiv a truly European city. Among the most notable is implementation of the Smart Cities (SC) program, supported by the German enterprise software company, SAP. SC initiatives use digital technologies and information and communications technologies to enhance quality and performance of urban services, to reduce costs and resource consumption, and to engage more effectively and actively with its citizens. Perhaps the most attractive element of the SC program to date in Kyiv is the introduction of a digital Open Budget, in which the city's budget and regular updates to budget execution are posted on the city's website. All stakeholders interviewed agreed that Open Budget, if properly implemented, would be a major step in providing transparency in city operations. Equally important, the SC program may provide a digital platform for piggy-backing other e-governance initiatives. For example, online availability of tendering processes which KIA is currently developing. PricewaterhouseCoopers is also developing the city's first annual financial report, which had never been previously undertaken. As well, approximately 600 employees have been eliminated from a redundant workforce.

KIA is playing a central role in these reform efforts. Supplementing city resources through financial and other investments is a primary objective. In addition, since its re-creation in 2014, KIA is playing a vital role in leading other initiatives and special projects, many reform oriented, which reportedly now take up nearly a third of its staff time. City senior management envisions KIA's role not only in leading investment tenders, but in concessions, PPPs, auctions, and other investment vehicles.

## 2.2. KIA WITHIN KMDA

The KMDA is the executive branch of the Kyiv city government. Kyiv's Mayor serves as Head of the KMDA, which is composed of numerous departments, of which 14 are separate legal entities, as well as approximately 1,650 other separate units such as schools, hospitals, and municipal enterprises. The chart below highlights KIA's position within the city government.



By its charter, KIA is organizationally under the KMDA's Economics and Investment Department (EID). The EID plays the leading role in the investment tendering department. It is important to highlight that **KIA does not control the KMDA's investment tendering process. As an "investment agent," KIA is primarily a facilitator**, without approval powers. While the new Draft Regulation makes KIA's role more explicit, this is a key consideration in how far KIA (or an Oversight Unit attached to KIA) can facilitate reform.

The city's other departments and units can be divided into two groups with respect to KIA:

1. Departments that provide permits necessary for KIA's investments. Examples are the Departments of Architecture, Property, and Culture. KIA's procedures involve two separate requests for its opinions in the procedures: in the pre-project step and the pre-investment step, before the actual request for permits after the winning of the tender.
2. Departments, districts, municipal enterprises, and other units that are potential owners of the municipal properties.<sup>2</sup>

In 2014, UAH 622.1 million of the city budget was allocated to capital construction projects, of which UAH 591.5 million has already been funded. This included UAH 419.1 million for the construction of

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<sup>2</sup> In theory, these Departments can be "project initiators" like KIA. In other words, they can put together PPP-type projects and present them for tendering. In practice, this seldom if ever happens, according to KIA staff.

road infrastructure and the subway, UAH 0.6 million for residential facilities, UAH 48.0 million for educational facilities, UAH 15.6 million for cultural facilities, and UAH 4.5 million for health facilities. For the same period, UAH 9.5 million from the special capital investment budget was used for capital investments.

Current priorities, as enumerated by the Mayor in July 2014, comprise fighting corruption, implementing a transparent budget, promoting investments, creation of a safe and comfortable environment for Kyivans, and cooperation with the community in decision-making. The Mayor has also cited numerous projects for energy efficiency and improvements in potable water, transportation, and traffic control, as well as specific restructuring projects. KIA-specific priorities highlighted by the Mayor such as increasing kindergarten supply are outlined below.

What is not entirely clear is the relationship between the city's capital budget and KIA's priorities and work. This possibly contributes to what KIA staff cited as continually changing "priorities," creating inefficiencies for its work.

## 2.3. KIA STRUCTURE AND OPERATIONS

### 2.3.1. MANDATE

As highlighted by the Mission and Vision statements (see text box), the Agency aims to become a single window for private investors to facilitate investments in socially significant infrastructure and regeneration projects. A principal aim is to complement private sector investments with scarce city financial resources, resulting in additional and important sources of funding for the city. The projects it supports are PPPs in which the city provides an asset (e.g., land, infrastructure) and the private sector provides the investment and operations for a socially important good or service such as kindergartens in new residential buildings, clinics, and restoration and upkeep of city parks.

In addition, the Mayor is using KIA for a wide variety of other tasks, including non-tendering investment functions and activities such as commercial real estate development. As noted above, KIA is also playing a greater role in championing the city's investment reform process. Reportedly, approximately one third of KIA staff time is now absorbed by these activities. There is nothing wrong, per se, with these additional tasks. But mandates need to be backed by the resources and organizational structure to match them, so it is an important issue. The Deloitte Consortium appears to be taking this into account in its recommendations, as discussed below.

#### KIA TELLS ITS STORY

**Our Mission:** To develop the investment potential of the city, spur on budget growth, and ultimately improve Kyiv for its citizens and guests. Our primary focus is on socially significant infrastructure and regeneration projects. We support concrete investment proposals through establishing effective cooperation between the public and private sectors, as well as investment and financial institutions.

**Our Vision:** To become the single window of interaction between the city authorities and the investor, offering consultation support and monitoring performance to ensure a transparent and fruitful investment process for all sides involved.

*From the KIA website,  
<http://investinkyiv.org/kia/about/#>*

## 2.3.2. ORGANIZATION

KIA's current structure is shown in the organizational chart below. This structure, however, does not fully reflect its functional responsibilities. The important investment promotion function, for example, is not acknowledged explicitly, although several individuals are assigned to it, but with no clear reporting responsibility. Several deputy director positions and departments below them (at the top of the organization) are staffed by only a few individuals in addition to the Deputy, while one division incorporates more than half of KIA staff (real estate). In part, the structure reflects the desire to have as key people at the Deputy Director level in order to provide them the highest possible salaries.<sup>3</sup>

The structure also includes other peculiarities. For example, the HR, accounting, and administrative functions are supervised by an Assistant to the CEO, rather than as a direct line function. Real estate functions account for the vast majority of KIA's personnel at this time, and they are represented in the first deputy position for real estate and a deputy position for back office real estate functions. While the distinction between these two units is apparent, it is not clear whether they are managed as equal departments. The latter seems to be a support function for the former. Section D.4 below addresses an organizational restructuring for KIA to become more efficient.

## 2.3.3. OPERATIONAL ASSESSMENT

### OPERATIONS

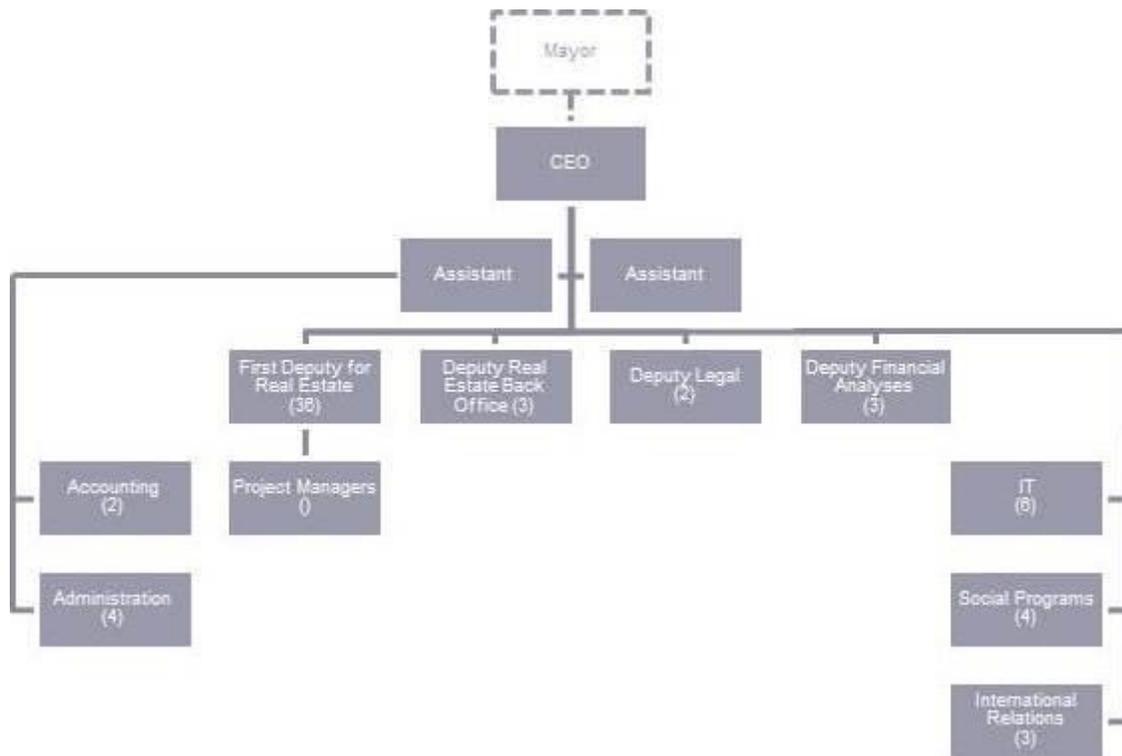
Since August 2014, when approximately 90% of the Agency's personnel either left or were fired, KIA has been staffed by what appears to be a dedicated, highly motivated staff, most of whom are willing to dedicate long hours to their tasks. The vast majority come from the private sector (real estate, finance, law offices) and bring a dynamic perspective to their jobs. They are led by a respected CEO with strong standing in the financial community and among other stakeholders that the CARANA team met.

Nonetheless, stakeholders, including private sector organizations such as the AmCham, the European Business Association (EBA), CSOs, and donors expressed concerns regarding KIA's transparency and, especially, the number of individuals at KIA and the KMDA (including the Mayor and Deputy Mayor) with real estate development backgrounds. To some extent this reflects the limited engagement and outreach KIA has to some of these organizations. It highlights the need for a communications/outreach strategy and the need for transparency in KIA's operations.

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<sup>3</sup> As described below, the issue of low salaries and how to recruit and retain individuals is a major KIA constraint.

**Figure 2. KIA Organizational Structure (with approximate number of employees per department)**



In 2014, KIA completed nine investment projects totaling private sector investments of more than HUA 1 billion. Through fees collected by the Agency, it claimed a first-ever profit, i.e., revenues exceeded KIA’s operating costs.<sup>4</sup> Whether 2014 was an atypical year is unclear. Political events during much of the first half of 2014 paralyzed or significantly slowed government operations. The nine projects completed appear to reflect good performance in that environment. The text box highlights three of the projects with perhaps the most significant social contribution. Others included minor investments such as a recreation room for metro workers and development of a large office and commercial property project.

From late 2014 through May 2015, KIA has reportedly supported twelve investment tenders, for an estimated value of UAH 976 million or approximately US\$42 million. KIA has completed three contracts with investors in 2015 — construction of a sporting complex (UAH 11.9 million), residential apartments for those with social and economic needs (UAH 81.6 million), and construction of a children’s educational complex (UAH 28.9 million).

KIA prioritizes several areas of special interest to the Mayor and city management. These include:

- *Kindergartens.* KIA is promoting private investment in kindergartens to address a backlog/deficit for over 7,000 children currently not able to attend because of a dearth of infrastructure. The Agency has issued one tender in this area in 2015, with nine other projects being prepared. The potential projects also include secondary education and adult education.

<sup>4</sup> The CARANA team was unable to verify the financials assuming a profit. It should be noted that all figures regarding investment amounts came from interviews with KIA staff. Figures were cross-checked where possible.

- *Medical Centers.* Soviet medical centers were typically very large, with underutilized grounds. KIA aims to promote better use of these properties and provide better medical services by bringing in private investment. According to KIA management, there are currently nine projects underway in the medical area.
- *Transportation.* Management indicates that tendering documentation is being prepared now for seven transport infrastructure construction projects. Once implemented, these projects will add approximately 268,902 square meters to the total Kyiv infrastructure facilities' space, the total budget of these projects constituting UAH 4.8 billion. KIA is also currently developing documentation for two parking facility investment projects worth more than UAH 800 million on a land area of over 55,000 square meters.

### THREE KIA 2014 SUCCESS STORIES

- **Elita Center Residential Fraud Compensation.** Apartments for those defrauded by previous developers of two commercial residential complexes (UAH 750 million, approximate value)
- **Free WiFi in Metro.** Metro facilities for use of private operator to provide free WiFi connection through advertising-based revenue model for the investor (UAH 100 million)
- **Baked Goods Distribution Kiosks** on city premises (UAH 55 million)

- *Energy efficiency.* KIA is exploring numerous initiatives to promote energy efficiency throughout the city, especially in kindergartens with antiquated heating and insulation systems, where reduction in energy costs may permit the reopening of abandoned facilities.
- *City parks and recreation.* There are currently 23 city parks in poor condition. The key issue is not simply renovation, but ongoing maintenance, which the city budget cannot finance. KIA is working to involve private investment in these parks. Management indicates that KIA is structuring over 30 recreational infrastructure projects covering more than 600 ha, which will require approximately UAH 300 million in investments.
- *Technology.* KIA is assessing a 300 ha area in northeast Kyiv where it is trying to negotiate for a technopark/IT center. This is a big project, estimated at \$500 million.
- *Tourism.* KIA is currently preparing tendering documentation for four investment projects worth more than UAH 1.0 billion on a land area of over 50,000 square meters. This includes hotel construction/development, a wax museum, and numerous other ventures.

## SUSTAINABILITY

Clause 4.18 of the new Draft Regulation calls for a fee to be paid by the investor to KIA for its work as the investment agent (the Draft Regulation is discussed below). The clause states that “the investment agent’s cost of the investment project development works shall be reimbursed by the winner of the investment tender in the amount to be determined by the Commission on the basis of the budgeted cost estimate, but at no less than 1% of the estimated cost of the investment project implementation.”

The AmCham and other stakeholders strongly oppose this fee on a variety of grounds. Their objections include that (a) the fee is too high and will dissuade investors; (b) it creates uncertainty as to the total cost of the investment; (c) KIA is charging for “administrative services,” which Ukrainian law prohibits; and the process for calculating the fee is not transparent. The objections are also part of broader

concerns that a “single window” is in essence a monopoly which can easily become corrupted because of its power to stop an investment. It should be noted, however, that the 1% fee is not new, but was also incorporated into the existing and operative regulation.

An investment bank in the United States would typically charge approximately 3–5% for raising capital for an investor. In this case, the “investment agent” is undertaking a much different task of assisting an investor through the bureaucracy. As valuable as this may be, it provides less value added than raising capital, and thus should be lower. Fees can be an efficient way to reduce city outlays at a critical time, however the fee should also generate increased responsibility. If the investor is paying for KIA’s services, the Agency needs to earn this fee in its performance. In reality, it appears that the investor is not paying for service provision, but rather for these processes to be expedited. Cities and governments often charge for expedited services, e.g., passport processing.

An issue is the minimum set for the fee, regardless of the work, and more importantly from the investor’s perspective, the value added services performed by KIA. As noted by AmCham in a public forum in early June, this fee could be lower for some investments and higher for others. The fee could be set on the basis of KIA’s estimated value added. For larger transactions, the fee could be set at a lower *percentage*, as is often done in investment banking, although the total fee will be higher. Another critical issue is the cost base for calculating this fee. As noted in the regulatory section below, there are uncertainties in the new Draft Regulation as to what constitutes an “investment implementation project.” It is unclear as to what assets and cash investment streams are considered in the base.

Ideally, and in line with best practices, these types of fees should be negotiated at the beginning of the process (possibly as a fixed fee, not a percentage) between the investment agent doing the work (i.e., KIA) and the investor, as is done in the private sector. Under the Draft Regulation, however, this fee is negotiated by the Investment Commission, though as the entity responsible for reviewing and approving tenders, this presents a significant potential conflict of interest. It is simply a better practice for KIA, which is responsible for the work to be undertaken on behalf of the investor, to negotiate the fee directly.

## STRENGTHS

KIA’s main strengths are:

- A dedicated, highly motivated staff willing to put in long hours
- Extensive private sector experience
- Not wedded to the past or to the bureaucracy
- Support from the city’s senior management, especially the Mayor
- Led by a respected CEO, with good standing among stakeholders.

## WEAKNESSES

Despite the dynamism of its personnel, KIA’s current operations are inefficient — as recognized by many of the staff and stakeholders interviewed. The reasons include:

- *Limited day-to-day management guidance.* The CEO is widely respected and has been instrumental in guiding the Mayor’s objective in giving KIA a more dynamic role than in the past. However, he

is employed on a pro bono basis with other demands on his time. He must also respond to priority initiatives from the Mayor's office, which limits his ability to set day-to-day direction and have daily interaction with the staff.

- *Unclear benchmarks/objectives.* The staff have no TOR or job descriptions. They take on tasks as requested or informally, and in line with their expertise. Other than achieving investments, there is no measurement of “success” for KIA or the staff.
- *Work is not evenly divided.* Some staff work extremely long hours under considerable pressure, while others search for substantive work. Reportedly, some qualified staff members have left because they did not have enough to do. In addition to weak management, this may also be the result of the Agency's focus on real estate assets and transactions, leaving less work for those not centered in this area.
- *Weak investor relations.* KIA deals with investors who are walk-ins as well as with targeted investors referred by the Mayor's office and occasionally identified through research, though it is not clear that either process is managed well. For example, several staff members cited Mayor Klitschko's widely covered appearance at the international real estate exhibition MIPIM in Cannes, France, in March, 2015. While the Mayor and the Kyiv booth drew large crowds, including potential investors, there was reportedly no follow-up to the visit, nor were further contacts initiated with investors that showed interest.
- *The inability to provide market salaries presents a serious obstacle to retaining and maintaining staff.* This is an issue impacting not just KIA but the KMDA and the national government, of course. Related is the issue of pro bono work by much of the staff, including the CEO. Over the medium term, this approach is unsustainable.

## STAKEHOLDER PERCEPTIONS

- Interviews with stakeholders ranging from private sector to CSO representatives, revealed a number of shared impressions regarding KIA. There is significant concern regarding the personal interests in property/real estate of many KMDA and KIA officials and staff and how this will impact on transparency and insider dealings. Many stakeholders cited the private sector orientation and dual employment of some KIA staff not as an asset but as potentially problematic—making transparency all the more important.
- Reflecting the issue above, strong concerns about KIA's mandate being abused, especially the investment monopoly and 1% minimum fee.
- Unclear understanding of KIA's functions or purpose by many interviewed.
- Business associations did not see the “single window” functioning.
- Impression that corruption is still rampant in city services and investments.

## OTHER OPERATIONAL ISSUES

1. ***KIA is generating an only a limited amount of deal flow for PPP-type projects, which is its mandate.*** This is a concern expressed by both KIA staff and KMDA management. There are several reasons for this. One is the apparent ***lack of clear priorities and changing investment targets.***

KIA staff report that they are often switched from one project to another. Or they work on “priority” initiatives where there may not be any interest or sufficient interest on the part of investors. It is telling that many of the pipeline projects listed above include initiatives that are not really PPPs but other types of city property development and sales.

2. ***It is often difficult to “monetize” social investments that will permit investors to earn a reasonable return.*** This is also one of the primary reasons for low deal flow. The KIA staff is making a conscious effort harmonize social and investment objectives. For example, rather than the city simply procuring new street lighting (for which the city does not have the capital), KIA is looking at ways in which an investor that provides the needed capital can be compensated through downstream cash flows based on energy savings from the new street lamps. In this fashion, the city would not have to invest in new lighting, and an investor could earn an appropriate return. Another example is the repair of bus stops, where an investor would make the initial investment in return for operating commercial kiosks and advertising around the bus stop. But these types of investments often take time to construct and require creativity on both the part of KIA and the investor.
3. ***Against international best practices, KIA project managers regularly work both the sell and buy side of a transaction,*** i.e., they represent the investor (or buyer), as well as the interest of the city and its citizens (the “sell” side). This can create conflicting mandates, confusion, and issues related to transparency and best practices. It is certainly not a practice one would see in private investment banking, where roles would be clearly defined.
4. ***KIA is increasingly being asked to take on a larger role as overseer of a wider range of city transactions and activities.*** This, in and of itself, is not necessarily bad. It may appeal to city management to have an agency with the competency of KIA play this role. Moreover, in the current political/economic environment, generating a significant amount of investment may be a serious hurdle. However, if it is in fact playing non-investment roles, it does have implications for KIA’s mandate, organizational structure, compensation, and other issues — including oversight functions. This issue is discussed in more detail below.
5. ***The relationship between KIA-assisted projects and the city’s immediate needs is not clear.*** KIA is supporting some relatively large, politically sensitive initiatives such as housing for victims of the infamous Elita Center housing fraud, as well as a major IT park. However, many other initiatives appear relatively “small” — not just in monetary terms, but in meeting immediate needs, and are not part of the capital budget, e.g., baked good distribution points. It is important to recognize that the city’s (and the Mayor’s) objectives are not simply pressing needs but “making Kyiv a livable, European city.” This implies that projects such as the WiFi in the metro may be fully justified. Nonetheless, it is a matter of priorities and what a limited staff and budget can and should be focusing on. KIA needs to better prioritize its work and choose more visible, higher impact initiatives.<sup>5</sup>
6. ***A winning bidder on a tender still has to continue negotiations with numerous KMDA divisions, which draws out the cost and the time to implement an investment project.*** In effect, a winning bidder is allowed to negotiate further, rather than actually being awarded the project. The WiFi in the metro is illustrative. While the bid was “won” in late 2014, the project is

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<sup>5</sup> This issue is not particular to KIA. In its *Guidebook on Capital Investment Planning for Local Governments* (2011) the World Bank cites this as one of the issues in PPP-focused initiatives. They are often focused on investor interests and do not always reflect city priorities.

still not being implemented, as the winning company has had to negotiate with a number of different entities involved in metro operations.

## ONGOING REFORM EFFORTS

KIA's institutional challenges do not mean that progress has not been made during the last year. The Agency is addressing some of its weaknesses and negative stakeholder impressions. Among other accomplishments, KIA cites:

- Greater transparency, especially in the area of e-governance, where progress has been impressive with the launch of programs such as Smart Cities and Online Budget, and with online access to city properties and land for sale.
- A significant increase in the prices of land being considered in tenders; one hectare is currently US\$200,000.
- Much greater control over obligations undertaken by investors, including specified penalties for non-compliance.
- From close to only one participant per tender (with many bidders eliminated for minor mistakes) to approximately three bidders per tender.
- Regulations designed to significantly reduce the time of the tendering process are close to being finalized.

The Deloitte Consortium began analyzing KIA's functions in August 2014. Stage I of its work included an in-depth diagnostic assessment of KIA goals, organizational structure, personnel, and business processes (including work as an investment agency, real estate transactions, and project management). The consortium will soon present its restructuring recommendations, pending resolution of a payment issue expected to be resolved shortly. These recommendations will address:

- A proposed organizational model, including a reorganization of KIA with three primary units or departments servicing its key business functions — Investments, Real Estate, and Project Management.
- Development of TOR for staff, including a system of KPIs, setting specific targets for both the Agency and each employee.
- Develop and implement a comprehensive system of remuneration that will provide employees with better salaries that are closer to the private sector salary scale, including performance bonuses.

Our mandate did not entail an in-depth analysis of, and conclusions on KIA's restructuring. In general, however, the structure proposed by the Deloitte Consortium appears to make sense. An investment department should be structured to have the capacity to identify and meet with investors, and speak "investor language." It would explicitly focus on deal flow and also include the international division, focusing in larger part on securing donor assistance and foreign investors. Resolving real estate issues — or more specifically, helping investment projects navigate the KMDA bureaucracy and regulations — is the crux of KIA's work and merits a separate unit which would combine the two current real estate divisions (including the Real Estate Back Office Division, which appears to be a support function of the

first). Finally, a Project Management division could absorb the many non-investment tasks that KIA is asked to take on.

## RECOMMENDATIONS FOR KIA OPERATIONS

- 1. Implement needed structural changes.** While there has been progress in some investment processes during the last year, KIA has been caught in the dilemma of having to delay structural reform in order to focus on immediate needs and pressures. Not implementing structural changes such as reorganization, however, will only hurt its efficiency and create a vicious cycle of poor performance, which in turn generates greater pressures. KIA should prioritize and immediately implement accepted recommendations for the TOR and KPIs for all staff and assess with the Deloitte Consortium implementable recommendations.
- 2. Create the position of Chief Operating Officer (COO).** We believe that the CEO should be assisted by a strong COO to focus exclusively on implementation and oversight of day-to-day work. The exigencies the CEO faces in dealing with the Mayor's Office, priority investments, and emergencies does not permit him to have this focus. It is essential to have a person in this position. This is especially important when the CEO is working on a full-time basis.
- 3. Aggressively analyze and implement ways to outsource as much as possible of KIA's investor facilitation role.** This might entail, for example, creating a private or city-owned enterprise that investors can contract with directly to walk investors through the city bureaucracy in the tendering process. This would reduce KIA's staffing needs, reduce costs, and allow greater salaries for KIA staff who would focus on "sell" side issues and addressing problems that only city employees can.
- 4. Address the bonus system.** With KIA management, the Deloitte Consortium is exploring numerous ways to boost salaries and overall remuneration. While we support this initiative, however, it is fraught with possible unintended side effects that could potentially be counterproductive. KIA employees currently receive bonuses based on overall KIA performance. But not all differentiate between their salaries and bonuses and, in fact, cannot understand why their "salaries" may go up and down from one month to the next. The current bonus structure is not clear to staff. Bonuses work best when employees are fully in charge of KPI attainment. As KIA is not in control of the investment tendering process, this can lead to staff frustrations and discouragement. At the same time, a bonus system that rewards "good effort" but not actual success is typically not efficient. Similarly, KMDA in staff departments that are directly involved in the tendering process and who do control it, could easily become resentful of the KIA bonus system and work to obstruct expeditious tendering. Again, a creatively crafted bonus system could be very productive, but it must be analyzed carefully for unintended consequences. We recommend that part of the bonus be allocated on overall KIA performance. We have provided these observations to the Deloitte Consortium team.
- 5. Develop annual and quarterly action plans to prioritize investment targets.** As noted above, priorities for KIA staff are not always clear, reportedly resulting in time and human resource investments in projects that are not completed. The plans need to come from the Mayor's Office, with KIA assistance. Undoubtedly, emergency actions will be required that are not in the plan, but these can be handled primarily by the Project Management division, leaving the Investment Department with a more structured, prioritized work load.
- 6. Create an Investment Initiation Group to prioritize work and provide greater transparency.** The group could be chaired by the head of KIA's Investment Department, private

sector representative(s), the Mayor's Office, and KMDA units managing property. An important objective for the group is to simultaneously analyze city priorities, supply (city assets, priorities) and demand (investor interest and/or estimated ROI), and prioritize KIA transactions. A starting point for the Group would be the Annual and Quarterly Plans coming from the Mayor's Office.

7. **Understand the mandate and make it explicit.** KIA appears to be expanding its mandate from PPP-type investments to more oversight of other kinds of transactions such as straight property and land sales. To some extent, this may already be incorporated in the Deloitte Consortium's recommendation to establish a Project Management Division. This role needs to be explicit. It will have implications for many variables, including, for example, the bonus structure.
8. **Carefully review the new Draft Regulation.** This issue is addressed in the next section.
9. **Rethink the current investment tendering process.** This is an issue beyond KIA. There are many ways, however, in which the current process could be improved. For example, KIA could play a role in obtaining preliminary approvals from KMDA departments so that when a tendering winner is announced, much of the post-tender approval process has been initiated and perhaps in some areas completed.

## 2.4. REGULATORY FRAMEWORK

### 2.4.1. KIA LEGAL AUTHORITY

Officially, KIA is a municipal enterprise. The goal of KIA activities, as defined by the Charter, is "conducting investments ... consulting and other types of activities with the aim to receive profit or social impact for Kyiv territorial community, as well as achieving other goals defined by the Kyiv City Council or Kyiv City State Administration." KMDA approved the latest version of the KIA Charter through Resolution 343 of the Kyiv State Administration on March 11, 2011, and amended it on December 12, 2013. One important item in its charter is that KIA is directly subordinated to the Department of Economy and Investments (DEI) of the KMDA. This is a serious issue for the proposed oversight unit, as it would be asked to monitor the activities of an organization to which it reports.

According to the Charter, the CEO is appointed and dismissed by the Mayor of Kyiv at the request of the Director of DEI and with the approval of the Deputy Head of the Kyiv City State Administration. In practice, since August 2014, the CEO reports directly to the Mayor, who also serves as the Head of the Kyiv City State Administration. It is not clear that the DEI Director should be involved in this approval process.

### RECOMMENDATIONS

1. **The KIA Charter should reflect actual practices and be amended so that the KIA reports directly to the Mayor of Kyiv.** In practice, this is the way it operates today, and with the current political realities, KIA probably needs a direct relationship with the Head of the KMDA (the Mayor) in order to be effective.

### 2.4.2. MAIN LEGISLATION REGARDING INVESTMENT TENDERING

The Kyiv city tendering process for investments is currently regulated by the Kyiv City Council Resolution No. 528/1189 of May 24, 2007, "On the Approval of the Regulation on the Procedure of

Conducting Competitive Investment Bidding for Construction, Reconstruction, Restoration etc. of Residential and Non-Residential Objects, Unfinished Construction, and Engineering and Transport Infrastructure of Kyiv Municipality” (hereinafter referred to as Regulation 528/1189).

The legal sources for both Regulation 528/1189 and the Draft Regulation are based on a number of articles from other national and Kyiv-specific legislation discussed at more length in Annex III.

It is important to highlight that investments involve not just this specific legislation, but many other laws, depending on the assets, jurisdictions, and investment instruments utilized. Accordingly, the actual universe of laws impacting investments is large. For example, PPPs are guided by a specific framework law which recently had its first reading by the Rada. Many of the investments promoted by KIA are, in effect, PPPs, but they were not implemented under that law because of numerous legal constraints and weaknesses of that legislation. When the reforms to the law and its regulations are approved, its framework legislation could become an important instrument for KIA’s PPPs.

Regulation 528/1189 will soon be replaced with the updated and improved version, the Draft Regulation on the procedure of conducting investment tenders in the City of Kyiv (hereinafter referred to as the Draft Regulation).

The Draft Regulation, developed with Deloitte’s assistance, is a significant improvement over the existing regulations. It is better structured, reduces ambiguity, and highlights concrete steps and time frames in the tendering process. This level of specificity should reduce the need for official “interpretations” of required procedures, reducing the opportunities for corruption. Other improvements to be found in the Draft Regulation include the following:

- *Increases the number of types of investment projects that can be undertaken.* Under the Draft Regulation, the implementation of the investment project is not limited to construction, reconstruction, restoration, etc., of residential and non-residential structures, unfinished construction, and engineering and transport infrastructure. It can accommodate any other works or services not prohibited by Ukrainian law (Draft Regulation, p. 1.10). The open list of types of investment projects creates more opportunities for Kyiv municipality to attract investments.
- *The participants in the investment process and their roles and responsibilities, and the timeframes for their actions, are more clearly defined.* The participants in the investment process include the investment tender initiator, the Investment Committee, the Working Group, the tendering authority, the investment project customer, the investment agent, and the advisory-consultative body (Draft Regulation, Chapter II).
- *The timeframes for the tendering process are shortened.* Under the Draft Regulation, the investment tender procedures should take much less time (due to three instead of four Investment Committee meetings) than under the current Regulation. This will result in greater efficiency and lower costs. However, this improvement may be hindered by the fact that many steps still do not have timeframes, the Investment Committee has the right to change certain timeframes, and the overall period for the tendering process is not defined. Moreover, while a mandate to reduce the times involved is welcome, it is not clear that these timeframes are realistic. They appear to be aimed at complying with the Mayor’s “done in 90 days” mandate, rather than reflecting a true assessment of how long they take.

- *The procedure for accepting tender proposals is improved.* One principal means is by incorporating preliminary review of potential investors’ applications and the attached documents before the deadline for submission. This will prevent bids from being eliminated for small errors and omitted details to permit the “channelling” of favored bidders by eliminating others.

While it is a major improvement, the Draft Regulation contains numerous uncertain and vague provisions. Its provisions also remain fairly complex, with a large number of participants involved in the process. Some of these participants actually do not appear to have legal standing to carry out the functions prescribed by law. Among the most significant drawbacks of the Draft Regulation are:

- *Complex, unclear, and duplicative definitions.* Some key terms used in the Regulation are not clearly defined. For example, the definition of an “investment project” is too complex and circular, e.g., an investment project is defined as a number of “activities performed for the purpose of an investment project implementation.” Another example is the definitions of “pre-investment activities” and “investment project preparation activities.” These are core functions of an investment agent; however, it is hard to understand how these two types of work differ in the Draft Regulation.<sup>6</sup>
- *Involvement of participants lacking legal capacity in terms of civil and commercial legislation.* For example, the Tendering Authority is the Department of Economy and Investments of the city’s executive body (Kyiv City State Administration). The Department signs the investment agreement on behalf of the executive body (or the territorial community as the final beneficiary). However, the Department is neither a legal entity, nor a municipal body itself, and should not act as an independent counterparty. Empowering the Department to sign investment agreements seems to contradict the Law “On Local Self-Government in Ukraine,” under which agreements on behalf of the territorial community are to be signed by the city mayor or his/her authorized representative. The same procedure is established by the “Internal Regulations of the Executive Body of the Kyiv City Council (Kyiv City State Administration)” (Chapter IX, p. 6).<sup>7</sup>
- *Blurred roles for participants involved in the tendering process, including unclear liabilities.* The Draft Regulation raises the issue of confidentiality obligations of the working group, but the obligations are not defined. The rights and obligations of other participants are also unclear. For example, the Investment Committee has 26 rights but only two obligations (p. 2.7) although many of the described “rights” should really be obligations, such as verifying that bids meet the requirements of the investment tender, considering the recommendations of the advisory body and making well-grounded decisions on whether to accept or reject such recommendations, and determining winners of the tenders. With this wording, however, the Investment Committee may escape responsibility for what should be its obligations. At the same time, the stated obligations of the Investment Committee are not specific, for example: “to ensure the organization of investment tenders in accordance with the effective legislation of Ukraine and

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<sup>6</sup> For example: “Pre-investment works constitute “the sum total of necessary actions taken by the investment agent in conformity with this Regulation for an investment project preparation purposes” and “Investment project preparation works constitute a set of measures performed by the investment agent, including approvals of pre-design proposals (bids), pre-investment works, information, advertising, marketing and other events, to inform potential investors about the investment project etc.” The definitions are important, *inter alia*, because they will influence how KIA calculates its investment fee.

<sup>7</sup> KIA lawyers do not necessarily agree with this assessment regarding legal authority. Nonetheless, this was the opinion of a knowledgeable lawyer contact by the consultants. At a minimum, this issue should be clarified to avoid future litigation and problems.

with this Resolution” (p. 2.8). The issue of liabilities of municipal officials is addressed further in Unattached Annex III.

- *Undefined remedies or liabilities for not complying with timeframes.* As noted above, a positive feature of the draft regulation is its timeframes for the steps and the actions of different participants throughout the tendering process. However, no definite consequences are envisaged if they are not followed. Time frames codified in regulations without any consequences for non-compliance are likely to become meaningless and be ignored.
- *Vagueness of the 1% fee to be charged by KIA.* As discussed earlier, a *minimum* 1% fee across the board may not be a good management practice, nor will it always be in KIA’s interest.

### 2.4.3. LEGISLATION RELATED TO INTERNAL AUDIT

The regulations for internal audit at the State level, as well as for the city of Kyiv, are found in three documents:

- *Ukraine’s Budget Code, in particular, Paragraph 26, Control and Audit in the Budgetary Process.* This paragraph assigns responsibility to the Cabinet of Ministers for setting the basic principles of internal audit and internal control.
- *Cabinet Decree on Structural Sub-units of Internal Audit of September 28, 2011/N 1001.* This decree required state bodies to set up internal audit units in 2012 and ensure their functional independence.
- *Standards of Internal Audit, Order of the Ministry of Finance of 04.10.2011/No. 1247* (as tertiary legislation).

Internal audit in KMDA and the State government is overseen and monitored by the Central Harmonization Unit, which is currently assigned to the State Financial Inspection Services. However, the above decree and standards are not applicable to KIA as a municipal enterprise. Instead, the Central Harmonization Unit encourages all municipal enterprises, including KIA, to adopt the national internal audit standards.

## RECOMMENDATIONS ON THE LEGAL FRAMEWORK

- I. Provide an additional legal and transparency review of the Draft Regulation.** The tendering processes embodied in the Draft Regulation have been discussed extensively with KIA management. More recently (June 2, 2015) KIA held a public forum to discuss the Draft Regulation with stakeholders including AmCham and representatives of civil society. These discussions, however, have focused heavily on procedural issues and the investment tendering process and not on a review of legal issues such as many of the issues raised in the above section such as legal liability and definitions that meet legal and practical tests (e.g., “an investment project”). While there is an urgency to have the new Regulation adopted, taking the time to undertake this review will be a positive investment and reduce the risk of legal issues down the road. Unattached Annex III presents detailed comments on the Draft Regulation and highlights numerous inconsistencies with best international practices.

2. **Consider amending the wording regarding the “investment agent’s” fee.** This might be presented as “approximately 1%” or as a range of “0.5% to 1.5%,” to be negotiated between KIA and the investor.
3. **Improve definitions of “pre-investment activities” and “investment project preparation activities” in the Draft Regulation.** A direct negotiation between KIA and the investor on the fee will ease misunderstandings, as presumably an investor will not agree to pay for work KIA has undertaken prior to the award of the tender.

## 3. THE INVESTMENT TENDERING PROCESS AND OVERSIGHT

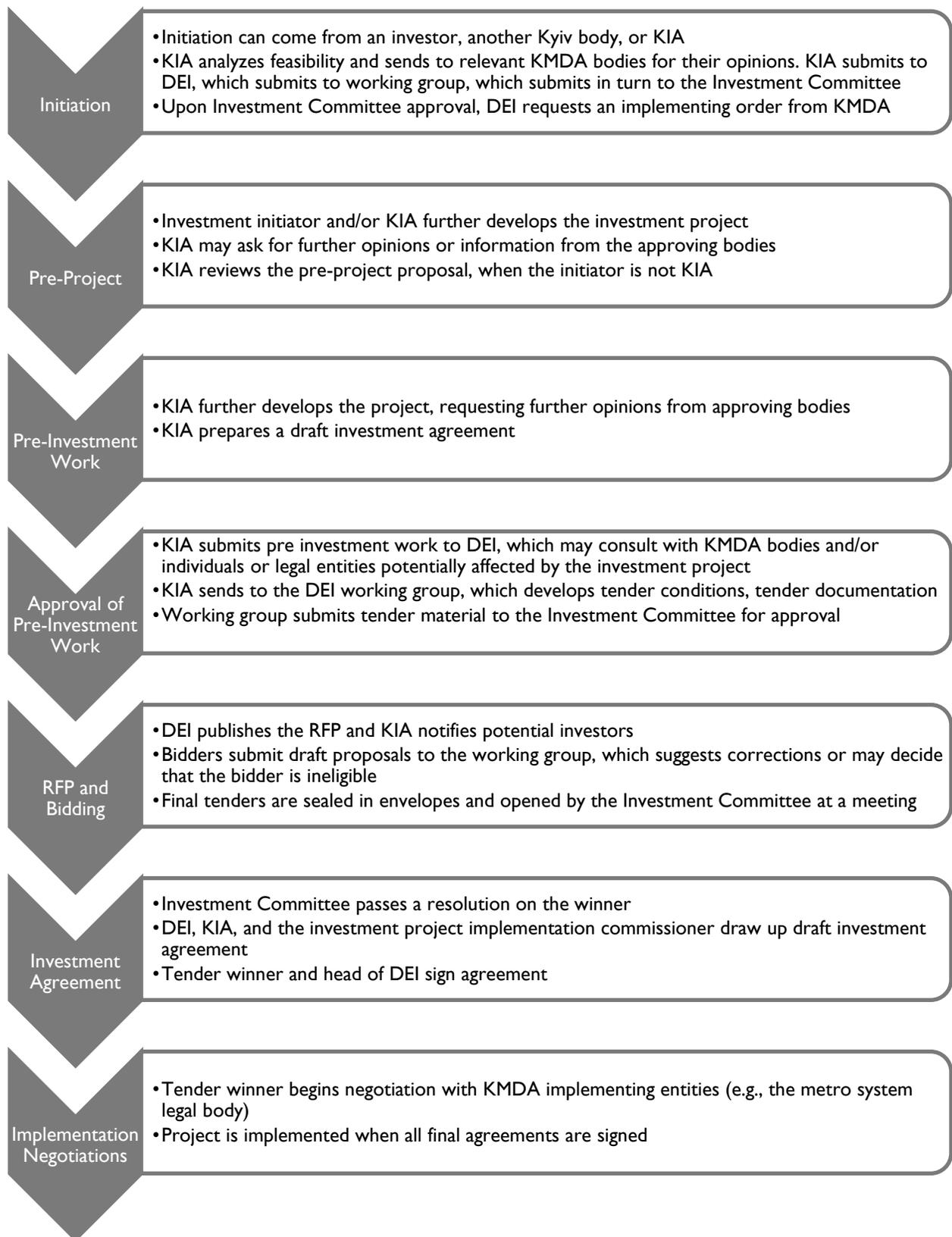
### 3.1. CURRENT INVESTMENT TENDERING PROCESS

The new draft procedures are intended to improve transparency and to expedite the investment process. For example, a new total duration from initiation to the signing of the agreement of 90 days is specified — a target espoused by the Mayor. The process previously could take up to 500 days. The procedures are, however, still quite cumbersome. Accordingly, meeting the 90-day timeline has been problematic. The procedures as described in the Draft Regulation also sometimes contravene best tendering practice, creating corruption risks.

The new Draft Regulation details the investment process, as highlighted below. The investment process is discussed in detail, step by step, in the table in Unattached Annex III.

**KIA serves an “investment agent” or “packager” of PPP-type investments where the city puts up existing assets (land, buildings, and infrastructure) in return for private sector investment for specified purposes in line with city objectives. KIA does not control this process. Ultimate responsibility for the processing and approval of tenders rests with KMDA bodies, and in some cases, with national level organizations.**

**Figure 3. The Investment Tendering Process**



As noted earlier, a problem with the process is the post-award negotiation process with city entities and legal bodies involved in the project/investment. The case of the metro WiFi also cited earlier is worthwhile highlighting further. After winning the bid, the negotiations have not yet been concluded with all metro bodies which, according to the investor, involved separate discussions with the bodies that oversee the physical structure of the metro, as well as those that run the trains, the electrical system, etc. This last stage of the negotiation process can easily add months, and perhaps years to the conclusion of an investment.

## 3.2. OBSERVATIONS / RECOMMENDATIONS ON THE INVESTMENT PROCEDURES

The investment process, like all government activities, must balance two competing, and at times conflicting, objectives: (1) efficiency and business goals, i.e., in KIA's case, promoting investment, and (2) transparency and ensuring that use of public assets and resources is according to legislation and in the public interest. This conflict arises just as frequently in private business, where profitability and efficiency overlap its overall objective of protecting shareholders' interests. For any government, efficiency and overall impact is certainly important, but the government's responsibility to public interest must take precedence. The analysis of KIA's planned new investment process, as outlined in the Draft Regulation, attempts to take into account these two objectives. Not surprisingly, it leans extensively to the side of oversight. Given the history of corruption in city transactions, this is perhaps necessary.

Unattached Annex III includes a paragraph-by-paragraph assessment of the draft procedures, submitted separately from this report. The analysis is based on the premise that it is essential not only to be fair, but to appear fair as well.

We highlight major observations and recommendations on the tendering process below.

### 3.2.1. OPERATIONAL RESPONSIBILITY FOR THE PROCEDURES

**There is currently no ownership of the process by any one individual or office**, i.e., there is no operational staff currently responsible for overseeing the process or guiding it.<sup>8</sup> The procedures are the foundation of KIA's activities and the key to achieving its objective and mandate. Well-designed and clear procedures improve decision making and reinforce delegations of responsibility, whereas improperly or hastily designed procedures increase the risk of inefficiencies, errors, and abuse or misuse. **Recommendation: A senior operational member should be assigned responsibility for the procedures.** He or she should be seen as owning the procedures and should be the contact person when there are suggestions for improvements or changes, questions, or any confusion. Candidates for this role include KIA's legal office and possibly the proposed Oversight Unit.

### 3.2.2. POST-AWARD ASSISTANCE BY KIA

**KIA does not have a prescribed role in post-award assistance to investors, nor do the Draft Regulation/procedures provide for KIA compensation at this stage.** Neither the draft nor current investment procedures cover actions that may follow the signing of the agreement. The (minimum) 1% fee is described as covering "the cost of the investment project development work,"

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<sup>8</sup> This also impacted the consultancy, as it was difficult to find someone to whom questions could be addressed and conflicting responses were sometimes received.

which would not encompass any expenses after the contract has been awarded. **The Draft Regulation and fees for the post-agreement stage should be adjusted to provide for an investor to legally contract KIA for post-award services.**<sup>9</sup>

### 3.2.3. EFFICIENCY AND TIMELINES

**Investments will not be concluded in 90 days under the proposed Regulation.** The 90-day period reflects the Mayor’s objective. While the goal of expediency is commendable, artificial time frames will not provide credibility to the process. Moreover, many steps have not been assigned timeframes for completion and for many of those that are specified, the most significant impediment to timeliness is the response from the approving bodies. There are no penalties in the Draft Regulation for delays although these would fall under other legislation.<sup>10</sup> In fact, obtaining opinions or approvals may take up to three months; national permits are often the most problematic step. **KIA and KMDA should undertake a walk-through of the procedures of the approving departments that would uncover the hindrances and the causes of the delays in approvals as well as creative solutions to address those root causes. This should be the starting point for establishing more realistic timeframes when necessary and penalties for non-compliance.** This should also be one of the first tasks of the proposed Oversight Unit. Intervention by senior city officials such as the Mayor would further encourage the KMDA bodies to comply with reasonable timelines. High-level negotiations with State approving bodies would also be required.

### 3.2.4. PROJECT INITIATION AND TRANSPARENCY

**The process of project initiation and prioritization is unclear.** The initiation of investment projects is not transparent. KIA primarily relies on a review of the land inventory that is reportedly being improved, but it will take time to be made public and available online. Various constraints do not allow for the inventory to be completed quickly. KIA, commendably, posts a list of land plots or projects which are ready for tendering. **However, KIA should also consider periodically uploading the land inventory, even though it is still incomplete.** This would not only deflect complaints of lack of transparency in the selection of projects initiated by KIA, but could also increase investors’ desire to initiate imaginative investment projects.

**Lack of Official Priorities.** This issue, and recommendations on how to address it, is considered in Section 2 under “Recommendations for KIA Operations.”

### 3.2.5. CONTRAVENTION OF BEST TENDERING PRACTICE

**There may be opportunities in the tendering process for KMDA individuals to have insider information or have decision-making authority on tenders that contravenes best tendering practices.** An example is the activities of the Working Group (WG) which, as described in the Draft Regulation, serves as the secretariat for the Investment Committee, consisting of at least three people who are appointed upon the recommendation of the Investment Committee’s Secretary.<sup>11</sup> It is important to ensure that the WG, or any other individuals or groups involved in the tendering process,

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<sup>9</sup> This should be done in a way that gives the investor the choice of contracting with KIA or perhaps a private entity to help in this process, i.e., taking into account any anti-monopoly legislation or legal restrictions on government-owned enterprises competing with the private sector.

<sup>10</sup> The current Regulation, written in 2007, refers to Implementing Order No. 1970 of October 29, 2002.

<sup>11</sup> The current Secretary is KIA’s CEO.

have not been given powers that contravene best tendering practice, creating high-risk areas for corruption and/or collusion. WG duties which are of concern include the following:

- *Registering of bidders.* Under best tendering practices, this task should be given to a completely independent party or unit and not to a bid evaluator. It can be assigned to an unrelated department, such as the accounting department.
- *Review of tenders prior to official opening of bidder envelopes.* One positive attribute of the new Regulation is the provision for investors to be notified of any minor problem in their bids to permit correction before bids are considered. Elimination of bidders over minor errors was a common corrupt practice in the not too distant past.<sup>12</sup> However, while it is not clear that this is actually the case, the WG should not have access to tenders prior to the “official” opening of the bid envelopes. Such access will provide insider information to a small group and invites corrupt practices. This step should be replaced by a specification that minor errors could not be used as basis for disqualification, following a strict definition of minor errors.

Of course, only the Investment Committee should have the authority to declare a bid ineligible. The WG should not be allowed contact with the bidders while also potentially evaluating the bids and making suggestions to the Investment Committee. These functions must be segregated. There could be one group of evaluators and another group that interacts with bidders.

One KIA staff member who currently performs the review of draft proposal documents, explained that essential documents that must accompany bids are often missing, especially the surety or bank guarantee.<sup>13</sup> A booklet for investors could be prepared that would outline common pitfalls. Checklists of documents to be submitted for each tender should accompany the tender documentation given to potential bidders.

## B.5 OTHER CONTRAVENTIONS OF BEST TENDERING PRACTICES

- 1) The Draft Regulation requires KIA to contact investors when a new investment project tender has been approved and “to provide consultations on matters pertaining to participation of the tender proposals.” In compliance with best tendering practice and to ensure transparency concerning information furnished in response to bidders’ questions, a disciplined system should be followed: Bidders should be allowed to submit written requests for clarifications during a certain time period. Information on all questions and their answers would then be made available to all bidders equally. Guidelines should be prepared and publicized on what information KIA can provide when announcing new tenders to investors and outlining restrictions on communication.
- 2) A preferred form of tendering is to have two separate envelopes for the bid itself (inside a third envelope which keeps the bidder’s name secret) for works or construction projects. The qualitative and technical envelope should be opened first and evaluated before the financial proposal is opened, to counteract a tendency for the financial offer to influence the evaluation of the technical conditions. The best combined bid, i.e., the bid which has the highest score when the points for the technical and financial criteria are added together, should be the winner. This

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<sup>12</sup> As cited earlier, the original WiFi in the Metro bid by the eventual winner was initially thrown out over a very minor mistake, although it was considerably superior to a competing bid.

<sup>13</sup> This may be to avoid the cost of acquiring a bank guarantee.

additional step of separating the technical and financial bids should be added to the Investment Committee procedures.

- 3) Additional interactions with bidders, beyond those already enumerated, give DEI the right to give bidders “clarifications on matters pertaining to the conduct of the investment tender” and provide the contact details for the working group along with the RFP. Interaction with bidders prior to the awarding of the contract should be severely restricted—either to a formal system of requesting clarifications as described above, or statements of administrative concerns that can be provided by clerical staff during the tendering process.

## INVESTMENT COMMITTEE’S SELECTION OF WINNING TENDERS

KIA’s 2007 Regulation requires the Investment Committee meetings to be open to the public, but this obligation has been omitted from the Draft Regulation. Although it could be argued that potential investment projects should be kept confidential until there is a public request for proposals, it is essential that the Investment Committee meetings involving selection of winning tenders be open to the public, and this should be added to the Draft Regulation. Reliance on openness for improvements will be ineffective if CSOs or the public are not in attendance or are not monitoring the meetings and decisions. The dates, times, and locations of Investment Committee meetings that involve evaluation of tenders must be publicized well in advance. To increase the effectiveness of openness, and indirectly improve the Investment Committee’s decision making, the information in the Investment Committee protocol concerning winning bids (Paragraph 5.28) should be immediately posted online, and CSOs and the media should be encouraged to review the decisions. Specific reasons for disqualification of any bidders should be added to the meeting protocols as well as the recording of dissenting opinions.

## RECOMMENDATIONS

1. **The Regulation does not include all procedures and should be supplemented by further internal guidance.** This should include a checklist for the feasibility studies for the various categories of investment projects. For example, a comment was made about one investment proposal submitted by KIA that did not take availability of parking into account. On enquiry, it was explained that because parking is not included in KMDA’s permit criteria, it had not been included in KIA’s feasibility studies. The permit criteria should be considered only as minimum requirements.
2. **Many of the definitions in the Draft Regulation are unclear.** The definition of an investment project is circular and the CSOs and even KIA staff had difficulty understanding the “Investment Project Implementation Commissioner” definition (the first definition in Paragraph 1.4). The Draft Regulation includes references to a “Commissioner of Construction” but with no definition, rendering this role unclear. The definition of surety does not match its role in the procedures. It appears that there are really two sureties: one for bidders and one for the winner, but this is not reflected in the definitions.
3. **The procedures do not highlight confidentiality.** Although confidentiality may be covered in other legislation, it should be underlined in KIA’s procedures by listing specific information that should be considered confidential. For example, the objectives in pre-project or pre-investment stages should be kept either confidential or openly published to avoid certain bidders having inside information. It should also be clear that contact and communication with bidders must be limited to that outlined in the procedures.
4. **There is no mention of subcontractors or consortium members.** The criteria that apply to bidders should be extended to apply to subcontractors or partners in the bids.

5. **Publicizing of RFPs is limited to the city’s official website and other “printed media”.** This activity is assigned to DEI. The word “printed” should be removed to not restrict announcements to printed media. Avenues for KIA to publicize RFPs should be considered. For example, a current UAH 4.2 billion project for renovating a commercial harbor should be advertised in international marine engineering publications or websites. In a similar vein of encouraging investment, the city’s official website should have a link to KIA.

#### ADDITIONAL RECOMMENDED ANTI-CORRUPTION MECHANISMS

There are elements in the Regulation that should be further specified to avoid the possibility of abuse.

- 1) The Head of Kyiv’s DIFCA explained that his team checks a blacklist of contractors. In the absence an official Ukrainian blacklist, reference to the list used by DIFCA should be made when a winning bid is selected. Bidders or members of bid consortiums who have recent, relevant convictions, or have not completed earlier contracts satisfactorily, or have committed financial irregularities in their dealings with the city should be deemed ineligible.
- 2) KIA should only be allowed to notify the investors of an investment tender after it has been published on the official website and in the newspapers to avoid any advantage (or appearance of advantage) to certain bidders.
- 3) When the investor or other relevant parties are replaced, the new party or parties must meet the criteria of the original tenders.
- 4) KIA is currently permitted to decide whether there is a better use for an investment project during the pre-project proposal stage. Any such changes must be justified and approved by the Investment Committee.
- 5) Investors are allowed to request more land if it is required to complete an investment project. This presents a risk, as an unscrupulous investor could intentionally leverage an investment project to acquire more land. This can also create unfair conditions for other investors by changing the conditions of the investment project after it has been won.

### 3.3. OVERSIGHT FUNCTIONS

#### 3.3.1. KYIV’S DEPARTMENT OF INTERNAL FINANCIAL CONTROL AND AUDIT

Direct oversight of KIA is the responsibility of the KMDA Department of Internal Financial Control and Audit (DIFCA). At the national level, the State Financial Inspection Service (SFIS) has responsibility for the financial inspection of KIA.<sup>14</sup> KIA’s chief accountant could find no evidence of an audit by either DIFCA or SFIS in the last five years. As a municipal enterprise, KIA was not required to have an external audit. DIFCA is responsible for the internal audit of all of the KMDA bodies including municipal

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<sup>14</sup> Financial inspection plays a different role than internal audit, having a focus on transgressions and financial probity. SFIS has the authority to impose fines, unlike the government auditing functions.

enterprises. DIFCA was reorganized in 2014, and the new structure became fully operational in January 2015. It has 43 staff, of which 25 are experts, who were hired after taking a lie detector test. A municipal company, Kyiv Enterprise, also reports to the Head of DIFCA. As well, some Kyiv departments have their own internal audit units and are reportedly functioning well.

Kyiv Enterprise, which has over 30 staff, is tasked with inspecting completed infrastructure projects. DIFCA's Director has handpicked all of Kyiv Enterprise's staff. As building inspection is internationally a field rife with corruption, it was important to ensure that the Kyiv Enterprise staff has sufficient remuneration. Hence, Kyiv Expertise has two areas of work:

1. It performs inspections and evaluations of infrastructure procurements or other finished construction at the request of the DIFCA Head. These activities are considered its first priority.
2. It performs similar inspections and evaluations for fee-paying clients. Companies whose building work has been inspected under the first task cannot be taken as fee-paying clients to avoid conflict of interest. These fee-based assignments are used to supplement the otherwise low pay in municipal enterprises.

The reports of private consulting firms that perform this type of inspection and evaluation are generally considered to be "bought" and hence unreliable. DIFCA's Director indicated that this was often confirmed by comparing reports from private evaluation and inspection firms with those from Kyiv Enterprise. The differences have ranged from 5% to 97%. He stated that Kyiv Enterprise's service is so successful and its reports considered so reliable that he receives requests from KMDA departments for inspections of construction projects that are not part of Kyiv Enterprises' inspection plan. Reportedly, Kyiv Enterprise's inspections have led to approximately 20 criminal cases. When the loss is estimated at less than 10%, DIFCA requests repayment from the contractor without legal proceedings unless necessary. DIFCA audits also regularly uncover fraudulent transactions. For example, it recently audited the Kyiv Metro and found that UAH 80 million had been stolen and that UAH 325 million was at risk of being stolen.

DIFCA is moving towards greater transparency. All internal audit conclusions are posted online and it is currently working on software to upload all KMDA departments' quarterly financial reports onto DIFCA's website to improve the city's transparency.

Furthermore, five DIFCA specialists are tasked with reviewing the procurement documents that each department posts online, looking for errors and inefficiencies, reportedly saving the City of Kyiv UAH 1.5 million through this process. The program's success is evidenced in KMDA departments requesting additional procurement reviews by DIFCA for their departments. Once scanned procurement documents are posted online for all city procurements, DIFCA hopes that citizens will assist with the examination of procurement documents and report transgressions to DIFCA. In fact, DIFCA is developing software to filter the expected resultant high traffic. Besides the traditional financial or compliance internal audits in the audit plan set by the Mayor, DIFCA is also responsible for following up on complaints or reports from whistle-blowers.

Despite its apparent success, DIFCA's staff size is a constraint on the number of audits it can undertake. Accordingly, it generally limits audits to high-value transactions or procurements, generally above the UAH 20 to 30 million range. Given the much lower amounts flowing through KIA accounts, DIFCA would not normally audit KIA operations.

### 3.3.2. STATE FINANCIAL MONITORING SERVICES

The State Financial Inspection Service (SFIS) is in a period of transformation to a risk-based approach from its former incarnation as the Main Control and Revision Office of the Ukraine (KRU), which had a bad reputation as a punitive, petty inspection unit that would penalize civil servants for minor transgressions of the difficult procurement laws. Last year, SFIS uncovered 100 cases of serious violations of the procurement law, of which 15 became criminal investigations.

### 3.3.3. DEPARTMENT OF MUNICIPAL PROPERTY

Municipal enterprises submit their accounts to the city's Department of Municipal Property, which according to KIA's Chief Accountant, carefully analyzes the accounts, often with many queries.

### 3.3.4. EXTERNAL AUDIT

The city encouraged municipal enterprises to have an effective external audit performed by an independent auditor. KIA arranged for a pro bono external audit for the year ended December 31, 2014 by Baker Tilley, which issued an adverse audit report. The main reasons for the adverse opinion relate to missing essential documents predating 2013 and not having only one asset in the intangible assets revalued instead of the whole category as required by audit standards.

These issues can most likely be resolved by the planned revaluation of the land plots at the end of 2015 and negotiating for the auditors consider materiality in their findings.

## 4. COMMUNICATIONS AND OUTREACH

In his opening presentation to an audience of reporters and stakeholders on June 2 to launch the Smart Cities program, implemented with assistance from the German enterprise software company SAP, Mayor Vitali Klitschko began by stating, “I am glad to see you here, especially reporters, because many people simply do not know about the many things the city is doing to improve their lives.”

City government and KIA officials recognize that this is true. More effective communications and outreach are needed so that citizens can better understand progress in many areas such as online city budget programming and execution that is now available.

To date, KIA has not been able to secure the services of a PR/Communications Specialist, listed on its website, due to budget limitations. It has obtained occasional pro bono assistance from a Ukrainian PR/Communications specialist based in London who has traveled occasionally to Kyiv to support KIA efforts, as well as from other volunteers. Moreover, KMDA’s communications officer recently resigned due to his low salary level. Mayor Klitschko is supported by a press secretary and other staff who occasionally deal with KIA-related issues but are focused on many other city matters, especially the Mayor’s upcoming election campaign.

Some communications and public relations activities are being conducted, especially because elections are scheduled for October. For example, through a mass media strategy centered on Facebook, the goal is to bring an additional 300,000 visitors to the city’s website by the end of September.

In essence, KIA and the city not only lack a communications strategy, they currently do not have the staff to implement one. This needs to be considered in the context of the many budget and other challenges facing both KIA and KMDA, and the city in general. However, the importance of communications in creating confidence, promoting transparency, and maintaining momentum for the reform process should not be minimized.

The consultancy’s SOW called for development of “an outreach and communications strategy for the city to perform both during the consultancy and beyond to ensure that a wide audience has the opportunity to provide feedback.” As discussed with USAID, the CARANA team assessed this objective in light of the ongoing status of major reforms at KIA. Our conclusion is that a communications campaign related to the creation of an oversight function should not precede an announcement of KIA reforms themselves. These reforms are now under review and will not be implemented possibly for some months. We recommend that the establishment of the oversight function and unit be part of a more comprehensive reform package to be presented to the public when these are agreed to.

KIA has already reached out to stakeholders to obtain feedback on these reform efforts. For example, a workshop to discuss the new Draft Regulation — that serves as the primary legal basis for the investment tendering process — was attended by AmCham, civil society, and national governmental bodies. The CARANA team also met with a wide range of stakeholders (See Annex II, “Persons Interviewed”) to secure feedback from numerous sources. Opening discussion and input to a much wider audience would not necessarily have been more productive or useful. An oversight function is part of a more complex ecosystem of the investment tendering process where some knowledge of the process is required to make feedback functional.

## 4.1. REFORM OUTREACH AND FEEDBACK

KIA should continue reaching out to stakeholders before finalizing its restructuring, including the creation of an Oversight Unit. Informal interchange should continue, but formal dialogue is also required. The feedback to date can serve as the basis for a proposed restructuring, including recommendations for the Oversight Unit included in this report. These proposals should then be the basis for a public forum to generate feedback.

### 4.1.1. RECOMMENDATIONS ON REFORM OUTREACH AND FEEDBACK

1. **As KIA restructuring/reform plans (including the Draft Regulation) become more concrete, KIA should develop a schedule of dialogue-focused meetings with leading stakeholders.** The purpose will be to present the proposed reforms and obtain stakeholders' feedback. An important objective will be to lay the ground work for a smooth, formal presentation (No. 2 below). These discussions should be led by the CEO and selected KIA staff. There are sensitive issues already identified by these groups (the 1% fee, KIA's monopoly powers in investment tendering) that need further discussion. The meetings should not necessarily be limited to, but should include the following:
  - The two leading international business associations (AmCham and EBA)
  - The IFIs (World Bank, EBRD, IFC) and bilateral donors with Kyiv and municipal interests
  - Civil society (Reanimation Package of Reforms Group and other groups involved in city issues)
  - Ukrainian business groups.
2. **KIA should hold a public forum to formally discuss the reform process.** We recommend that this forum be organized and moderated by a professional communications group which has considerable experience in moderating such events in Ukraine. A professional group moderating the event will provide a smoother flow of ideas and serve to shield KIA from any aggressive and/or unjustified responses. This event should not be a public relations exercise but a legitimate effort to obtain more feedback. However, prior to the event the major issues identified in earlier discussions should have been addressed. We recommend that the Mayor open the event, emphasize the importance of and commitment to city reforms and transparency, and explain how KIA fits into the process and the importance of oversight, with the establishment of new functions. After a short but powerful initial presentation, we recommend that the Mayor excuse himself "to let you get on with the business of making these processes fully transparent and providing your feedback." The presence of a major political figure like the Mayor in the subsequent discussion would likely be a major factor and would not necessarily promote better dialogue.
3. **Present KIA's programs and ongoing work to the Kyiv City Council.** The City Council is not aware of KIA's objectives, plans, or accomplishments. KIA management should make a presentation in the immediate future to the Council on these subjects. This should be considered a priority action.
4. **Reform Implementation Announcement.** The Mayor should publicly announce each of the reforms undertaken when they become institutionalized (e.g., new regulations overseeing the tender investment process, and creation of KIA's Oversight Unit and the Advisory Board to guide it). These

can come in a roll-out sequence for maximum impact and not be presented as a single package of reforms, although in each case, the relationships and synergies to other reforms should be presented.

#### 4.1.2. CONTINUAL OUTREACH

KIA, working closely with the Mayor's Office, needs to develop an annual communications plan, with specific targets to define and measure success. This plan should incorporate a number of instruments:

1. **Hire a communications specialist.** While budget resources are limited, it is crucial for KIA to have a professional on board to lead the process of communicating to citizens.
2. **Revamp the Kyiv Municipality and KIA websites** with specific targets and strategies for increasing page views, and having highlighted sections on the reform process and success stories (including investment transactions benefitting the city). As noted earlier, work on this has started, with the aim of attracting over 300,000 to the city's website by October 2015.
3. **Determine a target minimum number of interviews by the Mayor** on leading television and radio programs.
4. **Issue regular press releases highlighting accomplishments**, or sometimes, just as important, how the city is addressing major issues facing its citizens.
5. **Develop a system for obtaining feedback from citizens.** One possible approach is the Citizen Report Card (CRC), a simple but powerful methodology for providing public agencies with systematic feedback from users of public services. By collecting feedback on the quality and adequacy of public services from actual users, the CRC provides a rigorous basis for a proactive agenda for communities. The tool was developed in the early 1990s in Bangalore, India, to identify the most serious problems facing the municipality according to its residents, and the quality of services provided by the municipality. In Ukraine, USAID's Fair Justice Project adapted the methodology to assess the individual courts, with over 800 assessed to date. The methodology could be adapted to cover an ambitious review of many, some, or even a small group of city services. Similarly, KIA's Oversight Unit could adapt it to measure investor perceptions of KIA and the investment process.<sup>15</sup>

The business adage, "under-promise and over-deliver," does not always translate into the political arena. Yet it is especially true in a successful communications and outreach campaign. Emphasizing reforms that are not actually implemented — especially in an era of social media and fast, free-flowing, and uncontrolled information — is not only not productive, it is usually damaging over the medium and long term. People know better. Hence the strategy must stay real so that Kyivians know it means something when a reform is announced. This is particularly so in the context of the upcoming municipal elections in October. The Mayor and Council members clearly want to highlight the accomplishments of their administration. This is not only to be expected, but it is also important to inform citizens that in a time of austerity and uncertainty in Ukraine, municipal resources are being invested in projects that change their lives. Communicating how a program such as Smart Cities or Open Budget can impact the lives of

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<sup>15</sup> A copy of the Manual for Using Citizen Report Cards in Courts will be provided to KIA, as well as links to the original methodology for municipal services.

ordinary citizens is critically important. At the same time, over-selling will come at a price in maintaining momentum for future reforms.

## 5. KIA OVERSIGHT UNIT

We propose the creation of an independent Oversight Unit either for KIA or within the Office of the Head of the KMDA, as discussed further below. This unit is especially important for addressing stakeholder issues of (1) potential conflicts of interest and (2) concerns with overall KMDA tendering and other investment procedures. The unit will serve to highlight Mayor Klitschko's commitment to transparency and will institutionalize this commitment in city operations. While the unit may initially reside within KIA, its oversight should eventually encompass KMDA investment operations or a similar organization established within city. This objective will take on additional importance as KIA becomes increasingly involved not just in investment tendering but in other city transactions.

The CARANA team found strong support for this function in our discussions with KIA and KMDA staff, as well as with stakeholders in the private sector and civil society.

### 5.1. MANDATE

- Oversee and ensure that all investment processes are designed, clear for all participants including potential investors, and implemented in accordance with established law and best international practices, including verifying that investors have met their obligations throughout the life of the project.<sup>16</sup>
- Provide the investment process with credibility, backed by leading, independent Ukrainian and international figures.
- Promote continuous, specific transparency mechanisms such as e-governance, online budgets, and tendering process, as well as online land registry and asset inventories.
- Advocate for and oversee a continuous investment reform process in KMDA/city investment processes as well as KIA.
- Ensure management is doing its job effectively.

### 5.2. FUNCTIONS

The Oversight Unit would comprise two departments which would have three primary functions.

- An Advisory Board to oversee KIA's operations and advise the Mayor, city management, and KIA managers, and dialogue with stakeholders on reform and investment issues.
- Ongoing performance audit and monitoring and evaluation of investment projects. While the unit would have the ability to undertake financial audits, its focus would be on reviews that ensure that regulatory procedures are followed in the investment process and that the process is transparent.

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<sup>16</sup> Paragraph 2.16 of the new Draft Regulation assigns responsibility for monitoring investor compliance to the KMDA's Department of Economics and Investment. This could present a potential conflict of interest. Whether that is the case or not, this would be a clear mandate for the proposed Oversight Unit.

- Have capacity to receive investor and stakeholder grievances and provide follow-up to planned solutions.

## 5.3. COMPOSITION AND STAFFING

KIA's Oversight Unit (KOU) supporting the Advisory Board should be lean, with no more than five professionals and one administrative person initially, led by an Executive Director. It will consist of two separate but inter-related units: Performance Audit/Monitoring and Evaluation division and Investor Feedback (Grievance Management). The Executive Director will have to review the staff's composition in relation to the volume of transaction's that KIA supports and well as an expanding KIA mandate.

As discussed below, the KOU's staffing will depend on its exact role and mandate.

### 5.3.1. ADVISORY BOARD

#### PURPOSE

The Board will be the oversight public face of the city's investment process and, if the Oversight Unit assumes a broader role, it will also be the "champion" of the city's reform efforts. It will consist of distinguished individuals and representatives of leading bodies that will commit their prestige and expertise to KIA and the city to ensure investors, as well as the public at large, that there is transparency to investment operations. Stakeholder boards are not new to Ukraine in the post-Maidan period. They have been created in numerous ministries and agencies (ministries of justice, finance, and agriculture, for example) with mixed results. One lesson learned from these initiatives is that they must have specific mandates and functions.<sup>17</sup>

#### COMPOSITION

Members cannot simply be figure heads, but individuals fully committed to and with an understanding of Ukraine's current environment and preferably, of municipal and investment issues. The more removed from day-to-day operations they are, the less a Board member can ensure that there is full transparency. It is important that they be perceived by stakeholders and ordinary citizens as people who are truly looking after their interests, meeting the Board's intended objective.

Members should represent a wide segment of society, providing the Mayor and KIA management with insight into varying issues and concerns. Finally, Board members cannot be expected to carry out oversight work on their own, but will be supported by the Oversight Unit who will monitor KIA and the investment process and report to them directly on a functional basis.

We recommend a nine member Supervisory/Advisory Board (with the option of expanding to 11 members) comprised of the following representatives.

- **Representatives of international and local business associations (3).** Recommended: (1) AmCham, (1) European Business Association, (1) Ukrainian business association or federation (to be defined, possibly one such as the Confederation of Construction Associations).

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<sup>17</sup> The City Council created a board earlier this year, including CSOs. Reportedly, they do not have a clear mandate and it is not functioning well. According to some CSO organizations interviewed, there is no clear direction. This type of initiative can actually hurt the credibility of other feedback mechanisms.

- **Civil society (2).** To be defined, however, there are numerous candidates (e.g., Reanimation Package of Reforms Group). There are numerous civil society organizations that follow city procurements and investments. The greatest credibility would come from an organization not affiliated with the Mayor’s political party.
- **Major accounting/auditing, management consulting, and e-solutions firms (2).** Selected based on their commitment to the organization.
- **Notables (2).** The Board should have a minimum of two, or possibly three, distinguished individuals from outside Ukraine. The ex-mayor of Budapest has been mentioned in several conversations. Ex-mayors from the Baltic countries, as well as from other Central and Eastern Europe countries could be excellent candidates. Well known, reputable international business persons could also serve as ideal candidates. This number could be expanded to three, if the city representative is not included as a formal Board member.
- **Investigative journalist (observer).** There are precedents for having journalists in such oversight functions in the U.S. and elsewhere. One possibility is that the journalist serve as an observer and not a formal Board member. In discussions with KIA staff, they suggested various candidates whom they believe could add to the Board’s mandate, e.g., the Ukraine representative of Radio Free Europe.

The suggested composition gives the Board credibility and relevance, however, it should be seen as flexible. For example, if the Mayor and the city identify three well regarded “notables,” perhaps the number of business associations could be reduced to two. An 11 member Board may also function well, although, we recommend this as the upper limit for members.

The Board could be chaired by one of the one of the Deputy Mayors or the Mayor. It may be more conducive to formal work sessions to have the Deputy chair the commission, with the Mayor attending at his leisure in an important but more symbolic role.<sup>18</sup> KIA’s CEO should participate in all Board deliberations (unless asked otherwise by the Board Chair) but to secure the Board’s independence, should not be a formal, voting member. The actual composition number is flexible. We believe that eleven members will give the Board ample representation and still be manageable. If, for example, there is strong interest in having three “notables” on the Board, the Kyiv City representative may become a non-voting member. However, we do not recommend increasing the total number beyond eleven.

We do not include individual Ukrainian businesspersons. While there are many distinguished, respected, and independent people that could add a unique perspective to the Board, the potential perception of conflict of interest could easily arise, thus negate the intended purpose.

## SELECTION

The selection process should be transparent but not overly formal. We recommend a temporary Selection Working Group (SWG) comprised of two to three representatives from international donors (potential members include the World Bank, the EBRD, IFC, as well as bilateral donors such as USAID and the Dutch Development Agency, KIA’s CEO, a representative from the Mayor’s office, and a KMDA

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<sup>18</sup> There are transparency/oversight issues with the Mayor chairing the Board, as well as with a Deputy Mayor who might be the titular head of KMDA’s Investment Commission. These need to be considered and addressed. Nonetheless, it is imperative that the office of the Head of the KMDA be actively engaged with the Board to make it effective.

representative).<sup>19</sup> Member selection would differ according to member category. The Board should be selected for a one year period, with rotation of other representatives recommended to promote transparency.

**Representatives of international and local business associations.** Potential members should be identified through a formal announcement and subsequent expressions of interest by the interested associations. The announcement should request a general statement of interest in participating in the Board, including qualifications as well as an expression of commitment to participate in and support the Board's activities. It should also specifically identify the individual that will represent the organization. For U.S. and European business associations, we believe their standing in Ukraine and their willingness to participate merits their participation. The more difficult selection will be the Ukrainian business associations because of potential conflicts or concerns about what these associations really represent. The SWG will develop specific criteria to review the expressions of interest and approve them. Ideally, these organizations will be familiar with city infrastructure and investment issues. Of course, this will raise the possibility of real or perceived conflicts, yet their participation is important in providing relevant feedback to the Board's deliveries.

**Civil Society.** An expression of interest or tender-like announcement should be used to initiate the process. The ultimate selection could take two forms: 1) Selection as described above for the Ukrainian business associations; or 2) Self-selection process where CSOs, with a proven track record in anti-corruption and professional competency, make the selection themselves. The SWG could, for example, select the top 4-5 applicants, based on specific criteria (standing, reputation, familiarity with city issues, independence, etc.). It would then ask them to convene and select two representatives from this group. Another way of doing this would be to select a broad-based, known, and reputable CSO such as the Reanimation Package of Reforms Group to select two representatives. We recommend the first option.

**Major accounting/auditing firm, management consulting, and/or e-government solutions firm.** Selected through a tender-like announcement and with criteria specifying commitment, value added to the Board, and identify individuals to be represented. Care must be made to not assume that the highest ranking person in the firm is necessarily the best representative. SWG members should look for an ideal and complementary mix of experience and value added. Of course, the participation of private firms that engage in business or can potentially engage in business with the city is sensitive. No firm should be excluded because of such a relationship but KIA and city management should consider a limited or rotating appointment (e.g., a firm can only serve for a specific period of time).

**Notables.** The "prestige" element of these candidates should exclude them from having to respond to a public notice. The SWG may help identify individuals, as will the Mayor and other senior city officials. It is essential that these individuals have the Mayor, KMDA and KIA senior management's approval and confidence that they will add value to an advisory role. We recommended, however, that identified candidates be approved by SWG. Candidates should commit to traveling to Kyiv for Board meetings no less than four times a year, as well as engaging in periodic digital communications between meetings.

**Investigative journalist.** The presence of an investigative journalist on the Board could generate considerable confidence among the public at large – perhaps even more so than that of "notable." No doubt, however, it is sensitive and must be done with great care. An open tender or notice may not be the most appropriate method of selection. One possibility is direct selection by the SWG (working in

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<sup>19</sup> Numerous individuals interviewed by the CARANA team suggested that donor representatives be included in the Supervisory/Advisory Board. We believe that donor organizations are not likely to feel comfortable with this arrangement.

conjunction with KIA and the Mayor's office) of an international news representative, such as Radio Free Europe. Other respected journalists from local television have also been recommended. As noted above, one possibility is to have the journalist be an observer and not a formal Board member.

Board members should serve for the duration of one year after which time there should be a new selection.

## DUTIES AND RESPONSIBILITIES

The Advisory Board will meet no less four times a year during its initial year. It will:

1. Review monthly reports submitted by the Head of the Oversight Unit, highlighting:
  - Status of tendering processes and investments.
  - Accomplishments and progress towards KIA's reorganization and reforms, including personnel restructuring.
  - Accomplishments and progress towards KMDA/city reforms, especially e-solutions.
  - Summary of findings of audits and monitoring and evaluation.
  - Summary of investor/citizen feedback presented to the Oversight Unit, including follow-up actions.
2. Review quarterly reports highlighting the above issues and performance relative to quarterly targets. The Board will also review KIA financials (especially highlighting fees collected by KIA). The quarterly review will also include the planned agenda for the upcoming Advisory Board meeting.
3. Provide observations, written comments, and advice to the Mayor, his/her office, KMDA, and KIA management on issues included or not included in the quarterly agenda. This will include observations and recommended remedial actions on audit findings, investor feedback, and other Oversight Unit input. Written comments will be prepared under the direction of the Head of the Oversight Unit and signed by the Board no less than two weeks following each meeting.

Board members will receive no remuneration for their work. International members will have their travel costs and per diem covered at the rates approved by international financial organizations (IFIs). However, as part of the selection process, the countries (or cities of origin) or another donor will be requested to sponsor this work by covering these costs.

### 5.3.2. TECHNICAL STAFF

The Advisory Board needs be supported by a lean staff led by an Executive Director. This individual should be a highly respected professional with no less than ten (preferably fifteen) years' experience in business, management, government, or related responsibilities. He/she must be capable and comfortable in dealing directly with senior officials (e.g., Mayor, Mayor's office, others at KMDA, as well as distinguished individuals such as those of the Supervisory Board). Annex II presents illustrative TORs for key staff.

## STAFFING AND DUTIES

The Oversight Unit should consist of four to five professional staff, supplemented by an administrative staff member. It will undertake audit, monitoring and construction inspection tasks as well as being the prescribed unit for complaints, grievances and whistle-blowers. The unit should be headed by an internal auditor who would report administratively to KIA but functionally to the Oversight Board.

Three of the professional staff should be composed of one or two internal auditors (one with a legal background) and a civil engineer. Since a significant portion of KIA's work involves legal agreements, legal skills would be instrumental in examining the agreements as part of the internal audit work and also investigating grievances and complaints. The engineer would monitor and evaluate the building works. Traditionally, internal auditors are accountants or have internal audit training, although many have other expertise or are members of other professions. For KIA, the most important technical skill is analytical capacity.

Their major duties would include:

- Review and analysis of procedures and making recommendations for their improvement;
- Developing other recommended corrective actions highlighting major issues;
- Providing guidance on implementing recommendations;
- Monitoring KIA's risk management;
- Monitoring to ensure the investment agreements are being implemented correctly and in accordance with the terms, including construction and other technical specifications;
- Follow-up on grievances or complaints received and escalating them to the Oversight Committee when appropriate;
- Coordinating with and when appropriate assisting KMDA's Department of Internal Financial Control and Audit;
- Preparing quarterly reports for the Oversight Committee;
- Preparing audit reports for any audits performed.

In order to maintain its independence, staff members of the Oversight Unit may not perform any operational duties including, inter alia, accounting; pre-project or pre-investment work; negotiations with investors; preparations of investment agreements or project management activities. Although they may advise on procedures, members of the Oversight Unit cannot prepare the procedures nor be held responsible for them.

Under Ukraine's public sector *Standards of Internal Audit*, internal audit units may use outside experts to assist with their tasks. To maximize the utilization of the Oversight Unit's resources, a cooperative relationship with DIFCA is foreseen in which it could ask DIFCA's assistance with auditing the approving departments and other departments that are relevant to KIA's procedures and supplement DIFCA's auditing as agreed.

### 5.3.3. STAKEHOLDER FEEDBACK/GRIEVANCE AND COMPLAINTS MECHANISM

The Oversight Unit would establish and manage a system for investors and other stakeholders to express concerns, complaints, and provide feedback on investment problems and other concerns. The primary vehicle will be through a separate link from the KIA website which will be managed by the Oversight Unit. Any complaints or grievances received will be registered and investigated. After the investigation, the lawyer, or the internal auditor together with the Head of the Unit will determine what follow-up action is necessary including possible escalation upwards. A member of the Oversight Board should be appointed as a liaison for the grievance process in order for complaints to be escalated quickly by the Oversight Unit.

The Oversight Unit will also co-ordinate with DIFCA in case any grievances related to KIA are reported to DIFCA.

#### INVESTOR FEEDBACK MANAGEMENT

Much like KIA's "Single Window" investment function, the Oversight Unit should include a mechanism for investors to express concerns, complaints, and provide feedback on investment problems and concerns. The primary vehicle will be through a separate link from the KIA website which will be managed by the unit. The KIA website will feature this link...Need to develop this further.

## 5.4. OPERATIONAL COSTS

Beyond the Board, the Oversight Unit will be lean, consisting of 4–6 professionals. Its Executive Director should be an experienced professional with a minimum of 10 and preferably 15 years' experience in the private sector and government who has the interpersonal skills to work closely with senior KMDA and KIA staff and the Advisory Board and is passionate about promoting the reform process. The Board will work on a pro bono basis, with funding for travel for its "notables" provided through sponsorships from the countries they represent. We estimate that it could operate with a cost of approximately UAHI.5 per annum.

As noted earlier, costs related to Advisory Board, especially the international notables, should be financed by sponsorships from the countries they represent, i.e., if the ex-mayor of Budapest is a member, the Government of Hungary should be encouraged to sponsor the relatively minor costs his/her participation entail.

## 5.5. ENSURING THE OVERSIGHT UNIT'S INDEPENDENCE

Although the issue is addressed in other sections, at least indirectly, it is one of transcendental importance and merits highlighting. Among the ways its independence can be ensured are:

- Establish a secure funding base such as a fixed budget line item, prior to creation or an allocation from the revenue generated by KIA's 1% fee charged to investors.
- Ensure that independent, respected institutions such as the proposed Selection Working Group are involved in the selection of Advisory Board Members.

- Seek truly independent members for the Advisory Board and ensure that they voice concerns and advice accordingly.
- To the extent possible, ensure donor funding for the Oversight Unit, especially as a reform champion.

## 5.6. REVISITING THE MANDATE AND ORGANIZATIONAL PLACEMENT

KIA and the Mayor’s office envisioned the Oversight Unit being an independent part of KIA, with possible replication to the KMDA in the future. There are numerous reasons why this may make sense. In the course of our assessment of KIA operations, however, the CARANA team identified other reasons why placement directly within the Office of the Head of KMDA, i.e., the Mayor’s Office, may be more appropriate. Where to best place the unit depends on its mandate. The table below presents key issues for consideration.

| Consideration       | KIA Focused  | Head of KMDA Focused  |
|---------------------|--|---|
| <b>Mandate</b>      | Focused on KIA and investment tendering process.   | More ambitious role, looking not only at KIA but as “champion” for KMDA investment and reform process (investment, procurement, e-government, etc.)   |
| <b>Practicality</b> | KIA requires restructuring/reforms itself. Initial focus on KIA might be warranted. May be easier to implement than broader mandate/institutional arrangement. | KIA does not control investment process. Oversight function limited to KIA may not produce needed reforms. KIA will not operate well, without major reforms at city level. May also help catalyze required changes. |
| <b>Staffing</b>     | Lean, 3-5 people.  | Will require additional staff. Possibly 6-8.  |
| <b>Scalability</b>  | KIA focused unit may be easily transferable to KMDA  | Bigger mandate could be “packaged” for and attract donor support.   |

There are several reasons why, despite the original focus on a KIA Oversight Unit, the city should consider a broader mandate:

1. *KIA does not control the investment tendering process.* An Oversight Unit focused on KIA’s operations would be limited to overseeing its role as an investment agent. Of course, to perform its oversight role, the unit would have to review the entire investment process but thus extending oversight beyond KIA to KMDA operations. KIA cannot be effective as an “island of excellence in a sea of turbulence.”
2. *KMDA faces many challenges and must respond to many opportunities.* There are many ongoing reforms beyond investment tendering – from e-government initiatives to procurement reform that could benefit from the guidance of the proposed Advisory Board and well as the technical staff.
3. *It may be easier to recruit “notables” with a broader mandate.* Moreover, the advice and guidance that these notables and other Board members may provide may extend well beyond KIA’s mandate.

4. *KIA needs to focus on its restructuring.* At this time, KIA is hard pressed to implement its own restructuring efforts while it responds to immediate tasks. Under this environment, it is difficult to envision KIA having the time or the resources to absorb another unit.
5. *KIA's future role is not clear.* Given the current investment climate and limited foreign investor appetite for investing, KIA may have to reassess its mandate in the future. In some ways, it is already doing this, with increasing non-investment tasks. If KIA is undertaking a relatively small number of PPP-type projects, an Oversight Unit may not be fully warranted.

**Recommendation: the Oversight Unit should be placed in the Office of the Head of the KMDA (Mayor's office), with special attention focus on KIA operations.** What we envision is a Unit that becomes a "Reform Champion" for the city of Kyiv, strengthened by guidance from and backing from the Mayor to KMDA investment and procurement agencies and bodies. The Unit, for example, could provide oversight on progress related to Smart Cities and Open Budget. This would include regular reports on bringing relevancy to these programs (e.g., monitoring how citizens react to them, whether they are used, and whether they do in fact, provide more transparency. Put another way, the Unit would help ensure that the focus of these initiatives are not just "process" (i.e., Open Budget online and available for review) but would assess and report on its impact (citizens actually using the system and, if it is not being used, recommendations to the Mayor and other key staff on how to make these programs operable.

#### 5.6.1. PACKAGING THE OVERSIGHT UNIT FOR DONOR SUPPORT

As highlighted in the earlier Table one possible advantage of having an Oversight Unit with a broader mandate is that it may be possible to package its work to secure donor assistance – certainly all the more so if it presented as a reform champion for the city. Such a package could include temporary support for staffing, and long-term and short term technical assistance in specific areas such as investment tendering, institutional strengthening, and municipal issues.

#### 5.6.2. IN CONCLUSION

In many ways, the city Kyiv is part of the front lines in creating a new, transparent, European-oriented, Ukraine. The country, and the city, faces many difficult challenges under the current geopolitical environment and Russian aggression. Ukrainians and Kyivians have nonetheless demonstrated a spirit of sacrifice and endurance that is truly admirable. This spirit, however, is only sustainable as long as citizens feel that its government is moving forward and committed to changing the past and its corrupt practices. What happens in Kyiv draws national and international attention. The city's reform process matters beyond the Kyiv itself. For this reason, an Oversight/Reform Champion Unit that can catalyze needed changes can be an instrumental piece in the country's future.

# ANNEX I. BEST INTERNATIONAL PRACTICES FOR AUDITING

This overview of best practices is tailored to KIA's specific situation as a small municipal enterprise engaged in activities similar to PPPs. In general, the risks and activities of enterprises involved with PPPs would be considered analogous to many other municipal enterprises, such as transport municipal enterprises which have a much longer history of large investments and infrastructure projects and related oversight.

The generally accepted view is that the government should not be involved in the day-to-day management of government-owned enterprises and should allow them operational autonomy to achieve their defined objectives. The preferred system, especially for larger enterprises, is to have a board of directors/supervisory board, which are analogous to those in the private sector. Advisory boards, which provide guidance only, are less common and may be used to supplement a supervisory board or as a board for smaller enterprises.<sup>20</sup>

## PARTICULARITIES OF PPP OVERSIGHT

The main oversight concern of PPPs is the need for strict oversight during project implementation and of the implementer/investor<sup>21</sup> to ensure that the technical specifications and other obligations are met over the lifetime of the agreement. Oversight of projects may involve monthly meetings between an oversight committee and the investor for large projects. The costs of the oversight can be factored into the investment cost so that the investor reimburses the monitoring costs. If the investor has responsibility for operations and maintenance, but not ownership of the assets, the quality and frequency of the maintenance schedule must be monitored.

## OVERSIGHT BOARDS IN GOVERNMENT OWNED ENTERPRISES

### STANDARD SETTERS

Relevant standard setters for boards of directors are the OECD's *Guidelines for Corporate Governance in the Public Sector*<sup>22</sup> and South Africa's *King Code for Corporate Governance, 2009*<sup>23</sup> which specifically applies to both the private and public sector. *The King Code* which is highly respected is particularly appropriate for Ukraine as it is written in the context of a middle income country. The shorter *2010 Government Owned Enterprises Baltic Institute of Corporate Governance* from the Baltic Institute of Corporate Governance provides a regional perspective.<sup>24</sup>

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<sup>20</sup> In a 2012 survey of Norwegian municipal enterprises, many of which are small, the preferred method of government shareholder control is through an indirect method of setting priorities and targets for the municipal enterprises. <http://www.iris.no/hjem/norwegian-municipal-enterprises-financed-by-ministry-of-local-government-and-regional-development>

<sup>21</sup> The word 'investor' is used here to be consistent with KIA's terminology.

<sup>22</sup> <http://www.oecd.org/daf/ca/revisionoftheoecdguidelinesoncorporategovernanceofstate-ownedenterprises.htm> (The OECD will shortly be issuing a revised version of the 2005 Guidelines)

<sup>23</sup> <http://www.iodsa.co.za/?kingIII> (King Code 3 is free to download but the report must be purchased).

<sup>24</sup> <http://www.corporategovernance.lt/en/policy-and-research-16.html>

## SUPERVISORY BOARDS

### **Responsibilities**

Supervisory boards' responsibility includes significant oversight duties. Some of this oversight might be assigned to separate board committees such as the audit, compliance and risk committees. The main oversight responsibilities of a government owned entity's supervisory board and/or its audit, risk compliance board committees encompass:

- Monitoring that management is doing its job well;
- Reviewing corporate strategy and risk management;
- Ensuring that appropriate systems of financial and operational control are in place and ensure compliance with the law and relevant standards.
- Ensuring the integrity of the financial statements;
- Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse
- Overseeing the process of disclosure and communications
- Reviewing and approving the internal audit function's activities including its effectiveness; its planning; that there are no unjustified restrictions or limitations; approving the appointment, dismissal and remuneration of the chief audit executive; reviewing and approving audit reports and verifying that management and operations implement corrective actions
- Instituting and overseeing special investigations as needed
- Reviewing the independence, audit scope and performance of the external auditors, and exercising final approval on the appointment or discharge of the auditors.

### **COMMON CORRUPT TENDERING PRACTICES**

#### **Bidders**

- Collude to fix bid prices;
- Promote discriminatory technical standards;
- Interfere improperly in the work of evaluators;
- Provide counterfeit or false certificates or documents;
- Switch contractors or investors after award to circumvent meeting bidder criteria;
- Offer bribes.

#### **Tendering Authorities:**

- Tailor specifications to favor particular bidders;
- Restrict information about contracting opportunities;
- Claim urgency as an excuse to award to a single contractor without competition;
- Split tenders so that the tenders fall below tender thresholds;
- Breach the confidentiality of bidders' offers;
- Disqualify potential bidders through improper prequalification;
- Cancel tenders and call for new tenders;
- Fail to enforce quality standards, quantities or other performance standards;
- Divert delivered goods for resale or private use;
- Demand bribes or other private benefits.

The survey of Norwegian municipal enterprises found that the most effective municipal enterprise board acts as a supervisory board but also plays a representative role as a “mouthpiece” for the enterprise.

### **Appointment of Supervisory Board Members of Government Owned Enterprises**

Board members should be nominated or appointed based on merit, and retained based on performance. Appointments should be made in a transparent manner based on the skills and experience needed. The appointment of an independent nominations committee that will compile a shortlist of potential candidates, having assessed the board's skills requirement is considered a best practice for public sector boards. Unfortunately, politicizing of the selection process often stands in the way of appropriate appointments. Some of the classic effects of politicized nominations are: 1) replacement of the board

following a change in political powers, 2) excessive turnover of board members, 3) patronage, 4) replacing members without good reason, and 5) the inability to get desired profiles.

## **ADVISORY BOARDS**

Advisory boards are established in government entities to provide guidance on either a long term basis with rotating members or for specific purposes, for example, introducing bike lanes in a city. Advisory boards only provide guidance: they do not have any legislated powers to enforce their recommendations. Their appointment must also be transparent and based on competence and merit. Members of best practice long-term advisory boards typically include citizen and business representatives, technical specialists and experts whose independence can be assured, involved citizens whose motives are transparent and appropriate, and representatives of NGOs.

Duties of advisory boards encompass:

- monitoring management and the enterprise's performance
- providing "wise counsel" on issues raised
- providing knowledge on market and industry trends
- providing unbiased insights and ideas from a third point-of-view (not involved in the operation of the municipal enterprise)
- encouraging and supporting the exploration of new business ideas
- acting as a resource for executives
- encouraging the development of a governance framework
- imposing challenges to management that could improve the business

Advisory boards should have their responsibilities and rights specified in terms of reference for the board. The terms of reference should also comprise guidelines on the functioning of the board, e.g., regularity and duration of meetings of the committee, interactions with the officials including information gathering procedures (through records access and questioning of the unit officials); reporting; membership qualification; methods for replacement and removal of board members; length of appointment and method for removal or replacement; internal organization; procedures for the conduct of meetings and administrative assistance from staff.

An advisory board should work as independently as possible from the local authority, with little or no interference. Often, local governments forbid employees from serving on advisory boards other than as advisors or staff liaisons. Avoidance of conflict of interest and avoidance of the appearance of conflict of interest is important in the selection of advisory board members.

A specific sub-set of advisory boards are 'administrative boards' which have powers beyond that of advising or only guidance. Their responsibilities can include managerial, supervisory, or investigative powers. An example of the latter is a board of appeal.

## **APPOINTMENT OF THE CEO**

The Board should appoint the CEO of all enterprises, including government enterprises. For smaller enterprises, in particular municipal enterprises, without a supervisory board, a best practice is to have the mayor and city councilors concur on the appointment of the CEO. One method is to have one of the two prepare a shortlist of potential candidates and have the other make the final choice. Beyond the

appointment, the Baltic Institute of Corporate Governance found that a common concern in government owned enterprises was succession planning.

## **INTERNAL AUDIT**

### **STANDARD SETTERS**

The internationally recognized standard setter for best internal audit practices is the Institute of Internal Auditors (IIA). Its mandatory guidance<sup>25</sup> consists of *Definition of Internal Audit*, *Code of Ethics* and *International Standards for the Professional Practice of Internal Audit*, which are broad based principles. Although the IIA is applicable for both the private and public sector, internal audit standards have been developed for the public sector as the UK's *Public Sector Internal Audit Standards* (PSIAS) which is very close to the IIA's standards and was developed with the IIA's collaboration and the US Government's *Generally Accepted Government Audit Standards* (GAGAS) with which all federal and many state and local governments internal audit functions must comply. Ukraine's Ministry of Finance 2012 *Standards of Internal Audit Standards* apply to State internal audit functions as well as Kyiv's Department of Internal Financial Control and Audit<sup>26</sup>. Compared to the IIA's, UK and US's standards, the Ukrainian Standards, although based on the IIA standards are more detailed and prescriptive, for example describing in detail who signs audit reports. There are also some minor differences, such as requiring only six month audit plans whereas the other standard setters require annual audit plans.

### **ROLE OF INTERNAL AUDIT**

Historically in Ukraine, as in other former Soviet countries, internal audit was seen as punitive, petty and compliance based (i.e. in a policeman's role). Modern internal audit emphasizes that Internal Audit's role is to add value to an organization and includes a consulting activity. These are reflected in The IIA's definition of internal audit:

"Internal auditing is an independent, objective Oversight and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance process.

The UK government describes the role of internal audit as: "focused on evaluating the management of key risks to and the continuous improvement of the delivery of effective public services."<sup>27</sup>

The IIA and PSIAS require the internal audit function to assess and make appropriate recommendations for improving the governance process to promote appropriate ethics and values within the organization and ensuring effective organizational performance management and accountability. According to the IIA and PSIAS, internal auditors must have sufficient knowledge to evaluate the risk of fraud (which would also encompass corruption) and the manner in which it is managed by the organization, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

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<sup>25</sup> The mandatory guidance can be downloaded by non-members from the IIA website, [www.theiia.org](http://www.theiia.org)

<sup>26</sup> According to an analysis of Ukraine's public sector internal audit legislation and further confirmed by the head of the Central Harmonisation Unit, which oversees and advises on internal audit in the government, municipal enterprises' internal audit functions are not required by law to adopt these standards.

<sup>27</sup> Internal Audit Customer Handbook, HM Treasury, 2013, page 5, <https://www.gov.uk/government/publications/internal-audit-customer-handbook>

## OBJECTIVITY AND COMPETENCE

The IIA requires internal auditors to have an impartial, unbiased attitude and avoid any conflict of interest and forbids even the appearance of a conflict of interest.

All standard setters call for sufficient professional competence but this does not require them to have an auditing or accounting education. Although the majority of internal auditors have an accounting or auditing education, many internal auditors have other technical training.

## ORGANIZATIONAL ARRANGEMENTS

To enhance independence, the internal auditor should report functionally to the board<sup>28</sup>, or ideally to a board audit committee, or in the absence of a board, to the CEO or highest level of management. A functional reporting relationship includes approving internal audit planning, receiving and approving internal audit reports and the hiring, dismissal and remuneration of the head of the audit function. If the internal audit function is limited or hindered in its duties, it should report this to audit committee. In effect, the audit committee is the supervisor of the internal audit function but only as it pertains to their responsibilities, duties, and output. Day-to-day administration of the internal auditors is the responsibility of the organization's management. The IIA and PSIAS require the establishment of a charter agreed between the internal audit function and the organization's management confirming duties and responsibilities for both sides and, inter alia, grants the internal audit function access to all personal, IT systems (read access only), documents and records of transactions.

Small internal audit units, including those of only one internal auditor, are acceptable under best practices although there are clearly advantages to having more than one internal auditor.

An internal auditor cannot undertake any other duties that would impair or appear to appear to impair his/her objectivity or independence, for example performing accounting tasks

## TYPES OF AUDITS

Modern internal audit is system based. Rather than simply checking a number of transactions for compliance with rules, an internal auditor takes a holistic approach of reviewing the whole process, evaluating the efficiency and controls of the process and determining the root causes of any non-compliance uncovered in its review of the implementation of the prescribed procedures. All best practices emphasize that internal auditing must be risk based: for example, the risk to achieving the

### THE WORLD BANK'S MONITORING OF ITS FUNDED ROAD WORKS INCLUDES:

- Hiring of an independent project commissioner who represents the World Bank on-site and who through constant on-site monitoring ensures that implementation and testing specifications meet the agreement terms;
- Regular visits by a team from Washington who monitor the works;
- Surprise visits by a team of foreign engineers who are authorized to take samples of the road and send them to a lab of their choosing for testing.

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<sup>28</sup> PSIAS instructs internal auditors to interpret the terms 'board' and 'senior management' "in the context of the governance arrangements of the individual public sector organization".

organization's objectives should influence the choice of audits to undertake and the procedures or steps to be audited in individual audits.

The *Ukrainian Standards of Internal Audit* list three types of internal auditing: financial, compliance and performance audits. The latter, which is also called a value-for-money audit, is a more recent development in auditing and is becoming more and more popular in public sector auditing. Performance audits involve three principles: economy (obtaining goods and services of the appropriate quality and quality at the lowest possible cost); efficiency: (measuring the relationship of the resources and output) and effectiveness: (the extent to which objectives have been achieved). The most common performance audits are efficiency audits.

## **MONITORING AND INSPECTION OF CONSTRUCTION AND INFRASTRUCTURE PROJECTS**

Construction and infrastructure projects should be inspected and monitored on a regular basis to avoid 'cutting corners' on meeting specifications. The road industry, which is heavily supported by IFIs, is often cited as an example.

Infrastructure monitoring is either done full time by a project commissioner, i.e. an expert or team of experts who represent the owner as an independent party, whose task is to make sure that the design is appropriate and the implementation and testing match the agreement and legal standards. The commissioner may be supplemented by independent experts who make random, surprise visits. If the project does not warrant a full time commissioner, then regular visits supplemented by random, surprise visits by an expert should be made. At a minimum, an inspection should be performed by a technical expert before final payment. Hiring of an independent project commissioner who represents the World Bank on site and who through constant on-site monitoring ensures that implementation and testing specifications meet the agreement terms;

The specific areas to be monitored would entail:

- Matching achievements to targets and timelines;
- Investigating deviations from targets;
- Confirmation that the contract specifications are adhered to;
- Follow-up on decisions;
- Investigation of the validity of any contract variations;
- Confirmation that details of any warranties for purchased inputs are correct and applicable.

A singularity of PPPs is that they may involve specific activities or responsibilities of the investor beyond that of a normal infrastructure project. The monitoring should be tailored to the investor's obligations and should be regularly and randomly monitored throughout the term of the obligations.

## **COMPLAINTS/GRIEVANCES MECHANISMS**

Internationally, there has been progression in both the private and public sector of establishing and enhancing grievances' and complaints' mechanisms and structures. Grievances and complaints systems are seen not only as a means to resolve the particular complaint but should also lead to improved procedures and improve an organization's reputation and stakeholders' perceptions and satisfaction.

## PRINCIPLES OF GRIEVANCES AND COMPLAINTS PROCESSES

The foundation of best practices grievances and complaints system are:

**Awareness and Visibility:** The complaint and grievance mechanisms and bodies should be well publicized. There should be a clear statement of the scheme's role, intent and scope and authority.

**Accessibility:** Access should be free, open and available to all whom the system is expected to serve, taking into account language abilities of complainants. Ideally, initial contact can be made by telephone, email, mail or an online lodgment of grievances system. Contact details must be posted on the institution and any relevant other institutions' websites. Processes should be simple and user-friendly in order to not deter legitimate complaints.

**Confidentiality:** Complaints are treated confidentially, and it must be clear that there will be no adverse repercussions for a complainant. Agencies' policies on anonymous complaints are determined by the situation and culture of the country or stakeholders.

**Fairness and transparency:** The system and the decision-making must be implemented fairly and this fairness and impartiality must be exhibited. It must be clear that there are no repercussions for making a complaint/lodging a grievance. The complainants should be informed of the steps of dealing with complaint.

**Flexibility:** The system must have procedures which are responsive to the situation and are appropriate for the nature of the complaint or grievance.

**Efficiency and simplicity:** The investigation should be appropriate to the complaint and a decision and/or follow-up action should be timely. Timelines for responding to complaints and grievances should be set and standard procedures for similar complaints should be prepared.

**Effective:** Complaint and grievance resolution should lead to improvements in procedures or controls. The unit or position dealing with complaints and grievances must have high level support and/or access.

## GRIEVANCE /COMPLAINT PROCESS

The grievance process should be clearly documented and systematic and should involve the following steps:

1. Acknowledgement (and registration):
2. Assessment and Planning
3. Investigation
4. Decision
5. Response
6. Follow-up
7. Consideration of corrective actions to systems, procedures and/or units.

The system must include a methodology to escalate complaints to a senior level and to expedite urgent cases.

The grievance/complaint process should be fully documented. Comprehensive documentation of the complaint, the investigation and the response allow supervision and senior management to verify that complaints or grievances were appropriately dealt with. Statistics on the complaints are also useful for management.

# ANNEX II. TERMS OF REFERENCE FOR OVERSIGHT UNIT

## Kyiv City State Administration Advisory Board

### Terms of Reference (TOR)

#### I. Basic Functions:

The Board will be the KOU's public face. It will consist of distinguished individuals and representatives of leading bodies that will commit their prestige and expertise to ensure investors, as well as the public at large, that there is no overt corruption and there is transparency in the city's investment operations, including those of the Kyiv Investment Agency (KIA). Basic functions include:

- *Advise* the Head of the Kyiv City State Administration (KMDA), KIA's Chief Operating Officer (CEO), and the Kyiv City Council on issues pertaining to attracting Ukrainian and international investment, the ongoing efficacy and transparency of investment procedures such as tendering, private-public partnerships (PPPs) and other instruments.
- *Promote* international best practices in municipal investment and PPP-type mechanisms.
- *Review* reports presented by the KMDA Oversight Unit (KOU) Executive Director (EXD), noting progress on city reform efforts with respect to time frames, target dates, and other issues. This will include ongoing audits/monitoring evaluation of ongoing investments, assessment of investor and citizen grievances, and other issues.
- *Communicate* effectively with the press, through a chosen spokesperson or honorary chair, and in coordination with the office of the Head of the KMDA, regarding progress on the city's investment reform process, major issues being addressed, etc.

#### II. Composition

Advisory Board members must be fully committed to, with an understanding of Ukraine's current environment, and preferably, with municipal and investment issues. An illustrative composition is presented below. The exact composition may differ (e.g., an additional "notable" representative) but it is important that the Board be represented by a wide segment of stakeholders, providing the Head of KMDA and KIA management with insight into varying issues and concerns. The Advisory Board should be composed of nine to eleven members to keep it manageable.

Illustrative Composition:

- **Representatives of international and local business associations (3).** (1) AmCham (1) European Business Association (1) A Ukrainian business association or federation (to be defined, possibly one such as the Confederation of Construction Associations). This could also include a leading representative from the international financial sector such as an investment bank.
- **Civil society (2).** To be defined, but there are numerous candidates, e.g., Reanimation Package Group. There are numerous civil society organizations that follow city procurements and investments. The greatest credibility would come from an organization not affiliated with the Mayor's political party.
- **Major Accounting/Auditing, Management Consulting, and e-solutions Firms (2).** Selected on basis of commitment to organization. As noted above, one of these representatives could be an individual with strong standing in the international financial community.

- **Notables (2).** The Board should have a minimum of two and possibly three distinguished individuals from outside Ukraine. The ex-mayor of Budapest has been mentioned in several conversations. Ex-mayors from the Baltic countries, Georgia, as well as from other Central and Eastern Europe could be excellent. Well known, reputable international business persons could also serve as ideal candidates. This number could be expanded to three, if the city representative is
- **Investigative journalist (observer).** There are precedents for having journalist in such an oversight function in the U.S. and elsewhere.
- **City representative to chair meetings).** This could be one of the Deputy Mayors or Mayor. It may be more conducive to formal work sessions to have the Deputy chair the commission, with the Mayor attending at his leisure in an important but less role.

### III. Selection

A temporary Selection Working Group (SWG), illustratively comprised of two to three representatives from international donors (potential members include the World Bank, the EBRD, IFC, as well as bilateral donors such as USAID and the Dutch Development Agency, etc.), KIA's CEO, a representative from the office of the Head of the KMDA, and other KMDA representatives. Member selection may differ according to category.

**Representatives of international and local business associations.** Potential members should be identified through a formal announcement and subsequent expressions of interest by the interested associations. The announcement should request a general statement of interest in participating in the board; qualifications; as well as an expression of commitment to participate in and support the Board's activities. It should also specifically identify the individual that will represent the organization. The SWG will develop specific criteria for review the expressions of interest, and approval of Ukrainian business associations.

**Civil Society.** An expression of interest "tender-type" announcement should initiate the process. The ultimate selection could take two forms: 1) selection as described above, for the Ukrainian business associations or 2) a self-selection process where CSOs themselves make the selection. The SWG could, for example, select the top 4-5 applicants, based on specific criteria (standing, reputation, familiarity with city issues, independence, etc.). It would then ask them to convene and select two representatives from this group. Another way of doing this would be to select a broad-based, known, and reputable CSO such as the Reanimation Package Group (RPG) to select two representatives. We recommend the first option.

**Major Accounting/Auditing Firm, Management Consulting, and/or e-government solutions firm.** Selected through the "tender-type" announcement. The criteria should specify commitment, value added to the Board, and identify individuals to be represented. Care must be made to assume that the highest ranking person in the firm is necessarily the best representative. SWG members should look for an ideal and complimentary mix of experience and value added. Of course, the participation of private firms that do business or can potentially do business with the city is sensitive. No firm should be excluded because of such a relationship but KIA and city management should consider a limited or rotating appointment (e.g., a firm can only serve for a specific period of time).

**Notables.** The “prestige” element of these candidates should exclude them from having to respond to a public notice. The SWG may help to identify individuals, advise the Head of the KMDA on the suitability of candidates proposed by the city or others, and ultimately approve them. This approval will serve to meet one of the Board’s primary objectives: to provide added credibility to city investment operations.

**Investigative Journalist.** An open tender or notice may not be an appropriate method of selection for this position, given its sensitivities. One possibility is the direct selection by the SWG (working in conjunction with KIA and office of the Head of KMDA).

#### **IV. Specific Duties and Responsibilities**

The Advisory Board will meet no less four times a year, during its initial year. It will:

4. Review monthly reports submitted by the KOU’s Director, highlighting:
  - Status of tendering processes and investments.
  - Accomplishments and progress towards KIA’s reorganization and reforms, including personnel restructuring.
  - Accomplishments and progress towards KMDA/city reforms, especially e-solutions.
  - Summary of findings of performance audits and monitoring and evaluation.
  - Summary of Investor/citizen feedback presented to the KOU, included follow-up actions.
5. Review Quarterly Reports highlighting above issues and performance vs. quarterly targets, but also including KIA and KOU financials (especially highlighting fees collected by KIA). The Quarterly Review will also include the planned agenda for the upcoming Advisory Board meeting.
6. Provide observations, written comments, and advise to the Mayor, his/her office, KMDA, and KIA management on issues included or not included in the quarterly agenda. Written comments will be prepared under the direction of the KOU’s Director and signed by the Board no less than two weeks following each meeting.
7. Board members will also be strongly encouraged to meet with investors on how to maintain an ongoing reform process.

Board members will receive no remuneration for their work. International members will have their travel costs and per diem at the rates of approved by international financial organizations (IFIs). However, as part of the selection process, the countries (or cities of origins) or another donor sponsor will be requested to sponsor this work by covering these costs).

## **Kyiv City State Administration Investment Oversight Unit**

### **Executive Director**

#### **Terms of Reference (TOR)**

##### **I. Basic Functions:**

The Executive Director (EXD) provides leadership and manages all aspects of the KMDA Investment Oversight Unit (KOU). The EXD will be the lead individual in overseeing the reform, streamlining, and increased transparency of the city's investments and private-public partnerships. Reporting directly to the Head of the Kyiv City State Administration (KMDA), the EXD will:

- Provide ongoing advice to the head of the KMDA, the KIA Director, the KMDA Department of Economics and Investment, and representatives of other key entities involved in the investment tendering process;
- Ensure that investment-related reform is conceptualized, designed, and implemented as planned, according to specific targets and schedules, including KIA's restructuring and reform;
- Guide the advice of stakeholders and distinguished individuals in providing the head of the KMDA, KIA, and other city representatives with alternative views and opinions and thus consolidate the reform and transparency process;
- Deliver ongoing reporting on and recommendations regarding the transparency and efficacy of the tendering and investment procedures, ensuring that investments are undertaken transparently and in line with existing laws and regulations;
- Analyze investor and citizen feedback on city investment issues and work to address identified constraints and problem issues.

In these tasks, the EXD will establish and maintain productive work relationships with KMDA officials, the City Council, heads of major city departments, KIA management and staff, and KIA and city investment stakeholders. The EXD will work closely with the KIA CEO on all issues related to investment-related reform.

##### **II. Specific Duties and Responsibilities:**

1. Develop an annual Action/Work Plan ( AWP ) detailing planned reforms for the year (e.g., KIA restructuring, implementation of new salary structure/bonuses, adoption of new regulations), number of performance audits, etc. for presentation to the head of KMDA, the Economics and Investment Committee, KIA, and the City Council.
2. Liaise with and manage the work and logistics of the Oversight Unit's Advisory Committee, consisting of distinguished international representatives, business representatives and Ukrainian stakeholders. The EXD will, *inter alia*, arrange for their quarterly meetings, provide the necessary background materials such as quarterly reports, set the agendas for the meetings, and follow-up on recommendations following the meetings.
3. Supervise the work of the Oversight Unit's Audit/Monitoring and Evaluation division, setting the agenda for and overseeing the work undertaken by the division, including bringing to the attention of the Advisory Board's key findings and related recommendations.
4. Spearhead, catalyze and support major investment related reform initiatives, including e-governance ("Smart Cities", Open Budget), providing support to city department and agencies responsible for their execution.

5. Liaise with all KMDA senior managers, the Mayor's office, and all with state and local officials, implementing transparency and anti-corruption programs.
6. Help secure donor support for KMDA and KIA investment reforms, including working with KIA and other city departments to sell specific donor funded activities.
7. Working with KIA's International Relations Department, develop a depository of international best practices for municipal PPP-type, other investment initiatives, as well as e-governance solutions.
8. Supervise consultants contracted by the Oversight Unit or provided through donor financing ensuring that they receive the necessary support to accomplish their tasks and that their deliverables are of the highest quality.

In addition to these key functions, the EXD must also exhibit:

- Demonstrable initiative and creativity, and "out of the box" thinking.
- Strong interpersonal skills in establishing relationships with the Head of KMDA, the City Council, heads of other city departments, and other stakeholders.
- Passion and commitment to being a reform agent.
- Commitment to excellence.
- High ethical standards.
- A strong team spirit and cooperation with colleagues.

### **III. Qualifications:**

- A minimum of 15 years' experience, including senior positions, in areas such as private business, management consulting, law, or similar fields. A combination of private sector and government would be desired.
- A university degree and preferably a graduate degree in business/finance, economics, engineering, law and related fields.
- Fluent in Ukrainian and Russian, with a minimum working knowledge of English.

## **Kyiv City State Administration Investment Oversight Unit**

### **Internal Auditor, Legal Experience**

#### **Terms of Reference (TOR)**

##### **I. Basic Functions:**

Conduct objective audits and reviews of KIA's operations, including evaluations of the design of its processes and their implementation, focusing on high risk areas and provide reports on the findings, recommendations, auditee's responses and follow-up of its recommendation.

##### **II. Specific Duties and Responsibilities:**

- Assist with the development of the annual risk-based audit plan and three year strategic plan in coordination with the Director of the Oversight Unit and in consultation with senior and other management;
- Analyze KIA's processes as designed and as implemented, considering in particular, their efficiency and the adequacy of their internal controls and make recommendations for improvements;
- As part of audits review regulations and agreements with investors;
- Assist with the analysis of KIA's risk management and make recommendations;
- In accordance with the Ministry of Finance's *Internal Audit Standards (Order 1247, 04.10.2011)* and the Institute of Internal Auditor's *International Standards for the Professional Practice of Internal Auditing*, perform or assist with risk based performance, compliance financial audits as scheduled in the audit plan or otherwise instructed by the Director of the Oversight Unit, focusing particularly on areas of high risk;
- Determine root cause of findings and recommend changes to systems or processes;
- Develop other recommended corrective actions highlighting major issues;
- Provide guidance on implementing recommendations;
- Monitor the corrective action and review determine adequacy of corrective actions;
- Prepare reports on audits and periodic reports that include audit findings, audit conclusions. recommendations to address/correct risks or diversions from procedures, auditee's responses and the status of implementation of agreed corrective action by auditees;
- Report findings to the Director of the Oversight Unit, the Oversight Board and as requested to the Investment Committee;
- Co-ordinate, co-operate with and assist as appropriate KMDA's Department of Internal Financial Control and Audit;
- Cooperate with external auditors and coordinate with the State's Central Harmonization Unit (DVFK);
- Other duties as assigned by the Director of the Oversight Unit providing they do not conflict with the Ministry of Finance's Internal Audit Standards or the Institute of Internal Auditor's 'International Standards for the Professional Practice of Internal Auditing;

- Participate in responding to and investigating grievances and complaints and in the organisation and operating of the grievances and complaints handling system.

### **III. Qualifications:**

- Law degree; Competence in accounting, auditing or economics preferred.
- Minimum 3 years' work experience that demonstrates analytical and reporting abilities;
- Strong analytical and reporting writing skills;
- Fluent English;
- Able to deal with complaints; diplomatic skills;
- Strong interpersonal skills.

## **Kyiv City State Administration Investment Oversight Unit**

### **Internal Auditor**

#### **Terms of Reference (TOR)**

##### **I. Basic Functions:**

Conduct objective audits and reviews of KIA's operations, including evaluations of the design of its processes and their implementation, focusing on high risk areas and provide reports on the findings, recommendations, auditee's responses and follow-up of its recommendation.

##### **II. Specific Duties and Responsibilities:**

- Develop annual risk-based audit plan and three year strategic plan in coordination with the Director of the Oversight Unit and in consultation with senior and other management;
- Analyze KIA's processes as designed and as implemented, considering in particular, their efficiency and the adequacy of their internal controls and make recommendations for improvements;
- Analyze KIA's risk management and make recommendations;
- In accordance with the Ministry of Finance's Internal Audit Standards (Order 1247, 04.10.2011) and the Institute of Internal Auditor's International Standards for the Professional Practice of Internal Auditing, perform risk based performance, compliance and financial audits as scheduled in the audit plan or otherwise instructed by the Director of the Oversight Unit, focusing particularly on areas of high risk;
- Determine root cause of audit findings and recommend changes to systems or processes;
- Develop other recommended corrective actions highlighting major issues;
- Provide guidance on implementing recommendations;
- Monitor the corrective action and review determine adequacy of corrective actions;
- Prepare reports on audits and periodic reports that include audit findings, audit conclusions, recommendations to address/correct risks or diversions from procedures, auditee's responses and the status of implementation of agreed corrective action by auditees;
- Report findings to the Director of the Oversight Unit, the Oversight Board and as requested to the Investment Committee;
- Co-ordinate, co-operate with and assist as appropriate KMDA's Department of Internal Financial Control and Audit;
- Cooperate with external auditors and coordinate with the State's Central Harmonization Unit (DVFK);
- Other duties as assigned by the Director of the Oversight Unit providing they do not conflict with the Ministry of Finance's Internal Audit Standards or the Institute of Internal Auditor's '*International Standards for the Professional Practice of Internal Auditing*';

- Participate in responding to and investigating grievances and complaints and in the organisation and operating of the grievances and complaints handling system.

### **III. Qualifications:**

- A bachelor's degree. Competence in auditing, economics, finance or business administration;
- Minimum 3 years' work experience that demonstrates analytical and reporting abilities;
- Ability to speak English;
- Excellent Microsoft Office skills;
- Strong analytical and reporting writing skills;
- Able to deal with complaints; diplomatic skills;
- Tenacity and conviction;
- Strong interpersonal skills.

## **Kyiv City State Administration Investment Oversight Unit**

### **Monitor and Building Inspector**

#### **Terms of Reference (TOR)**

##### **I. Basic Functions:**

Monitor and inspect building and other infrastructure investment projects ensuring that they meet the specifications in the investment agreement. Verify the technical details of agreements. Liaise with the Investment Project Commissioner and when necessary act as the Investment Project Commissioner for KIA.

##### **II. Specific Duties and Responsibilities:**

- Review and comment on technical specifications in agreements and tender documentation;
- Monitor that construction and building works correspond to specifications and timelines in agreements through surprise and announced site inspections during and at the completion of an investment project;
- Monitor and investigate construction or other infrastructure contract amendments and extensions as appropriate;
- Liaise with investment project commissioners;
- Perform investment project commissioner role on smaller project as requested by the Director of the Oversight Unit;
- Assist the internal auditors and the Department of Internal Financial Control or Kyiv Enterprise as requested by the Director of the Oversight Unit;
- Determine root cause of findings and recommend changes to systems or processes;
- Develop other recommended corrective actions highlighting major issues;
- Provide guidance on implementing recommendations;
- Monitor the corrective action and review determine adequacy of corrective actions;
- Prepare reports on monitoring and site visits audits as well as periodic reports;
- Report findings to the Director of the Oversight Unit, the Oversight Board and as requested to the Investment Committee;
- Co-ordinate and co-operate with KMDA's Department of Internal Financial Control and Audit;
- Other duties as assigned by the Director of the Oversight Unit providing they do not conflict with the oversight responsibilities;
- Participate in responding to and investigating grievances and complaints as they pertain to technical issues.

### **III. Qualifications:**

- Professional civil engineer;
- Minimum 5 years' work experience;
- English preferred;
- Ability to work independently;
- Reputation for integrity;
- Strong interpersonal skills.

# ANNEX III. DETAILED REVIEW OF THE DRAFT INVESTMENT TENDERING REGULATION

This annex presents a paragraph-by-paragraph analysis of the Draft Regulation and was prepared as an extension of the analysis of KIA’s business procedures, which are outlined in the regulations. This table is intended as a working document to assist KIA with revisions to the Draft Regulation by pinpointing the specific paragraphs which are of concern.<sup>1</sup> Beyond the need for the procedures to be efficient and to have strong controls, they must also be clearly written to avoid future ambiguity.

An overall analysis of the procedures and more points related to the draft regulations are discussed further in Section IVB of the consultancy’s report.

| Row No.         | Paragraph <sup>2</sup>   | Consultant’s Comments <sup>3</sup>  |
|-----------------|--|---|
| 1. <sup>4</sup> | 1.1. This Regulation on the conduct of investment tenders in the City of Kyiv (hereinafter referred to as “Regulation”) has been developed in accordance with the Constitution of Ukraine, the <a href="#">Civil Code of Ukraine</a> , the <a href="#">Land Code of Ukraine</a> , the laws of Ukraine "On hero city Kyiv, the capital of Ukraine", "On local self-regulation in Ukraine", "On regulation of urban development activities", “On protection of cultural heritage”, “On investment activities", "On lease of land", and “On lease of State and municipal property” and establishes the method of organizing and conducting investment tenders, and entering into agreement of attracting investor capital in the development of the city of Kyiv. | Does not match the laws in first resolution of the Draft Agreement.   |
| 2.              | 1.2. Investment tenders shall be organized for the purpose of creating a propitious environment conducive to engaging in investment activities, attracting investors, ensuring economic and social development of the city of Kyiv, as well as increasing the inflow of revenues to the budget of the Kyiv municipality.   | Add in reference to achieving value for citizens from Kiev resources – i.e. tenders and awards have to ensure that the city’s assets and ultimate owners, the citizens, are protected.  |
| 3.              | 1.3. The objective of investment competitive bidding shall be to select a legal entity or a natural person offering the best terms of investment activities through a tender (competitive bids) procedure.   | --  |
| 4.              | 1.4. The terms and notions used in this Regulation shall have the following denotation:  | Overall, the definitions should be reviewed as they are often unclear   |
| 5.              | <i>Investment project implementation commissioner</i> is a legal entity, a natural person, or a private entrepreneur identified by the Investment Committee to carry out certain functions to ensure the implementation of an investment project acting as the commissioner of construction and/or other works and/or exercising the right to own, utilize or dispose of the property eligible to be used in the process of implementing the Investment project;   | This is not completely clear, it appears to be a ‘project commissioner’ i.e. an expert who is hired to on behalf of the owner/project client (not the investor) to verify the project implementation etc. meets specifications on behalf of the owner. The second part is unclear: could mean that the commissioner can also be |

<sup>1</sup> The lawyer for KIA requested a copy of the table to assist KIA’s legal staff with addressing the issues raised.

<sup>2</sup> Some words or terms have been added by the translator and are shown in brackets.

<sup>3</sup> ‘—’ means no comment,

<sup>4</sup> Words or terms highlighted in grey are referred to in the comments.

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         |  | the owner/ construction client which would not fit in with the above?<br>Should define 'commissioner of construction' – from Article 7 as well. Should clarify the difference between 'commissioner of construction' and the Investment Project Implementation Commissioner |
| 6.      | <i>Investor</i> is a subject of investment activities that decides to invest own, borrowed or raised property and/or intellectual valuables in to investment objects and that had been awarded a contract (in the form of an investment agreement) to implement an investment project as the winner of the relevant investment bidding as a result of the tender announced;  | --  |
| 7.      | <i>Investment agreement</i> is a legal document that regulates relations between the investor, the tendering authority, the investment project commissioner, and other person(s) on the basis of the relevant decision of the commission regarding the implementation of the investment project through an investment tender;  | --  |
| 8.      | <i>Investment agent</i> is "Kyiv Investment Agency", the municipal enterprise of the Kyiv City Council (Kyiv City State Administration);   | --  |
| 9.      | <i>Investment tender</i> is a procedure to select the best investment proposal in economic terms from a participant of the investment tender (bidder) regarding the implementation of investment projects;   | Better to say best value for the city   |
| 10.     | <i>Investment project</i> is the sum total of targeted organizational and legal, managerial, analytical, financial, technical and engineering measures undertaken by those involved in the investment activity in the form of documents that are necessary and sufficient to justify, organize and manage works performed for the purpose of an investment project implementation;   | It is written as if the investment project is a set of documents.<br>This is also circular definition.<br>Overall, needs to be rewritten.   |
| 11.     | <i>Investment tender initiator</i> is a legal entity, a natural person, or a private entrepreneur, including a municipal enterprise, institution or organization of the Kyiv municipality, a structural subdivision of the Kyiv City Council (Kyiv City State Administration), and/or a Kyiv district (rayon) administration, which, in conformity with the procedure established by this Regulation, submit proposals regarding the Investment project implementation measures.                               | --  |
| 12.     | <i>Tender documentation</i> is a set of documents to be approved by the Investment Committee and given to a bidder that intends to take part in the investment tender and has paid the registration fee;   | --  |
| 13.     | <i>Surety</i> is a guarantee (bank guarantee, a preliminary agreement etc.) provided by a bidding participant to guarantee carrying out the obligations undertaken under the tender proposal submitted within the deadline set forth by this Regulation, once the participant offered the top bid and has been awarded the contract. The requirements to the type, amount, validity and other terms of the surety shall be approved by the Investment Committee as part of the bidding (tender) documentation; | Unclear how the guarantee can be a preliminary agreement  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>   |
|---------|--|--|
| 14.     | <i>Materials for comments, proposals, conclusions, opinions and other information</i> is a list of documents required to be furnished so that the Urban Development and Architecture Department of the executive body of the Kyiv City Council (the Kyiv City State Administration), the Land Resources Department of the executive body of the Kyiv City Council (the Kyiv City State Administration), the Kyiv City Municipal Ownership Department of the executive body of the Kyiv City Council (the Kyiv City State Administration), and, whenever necessary, other concurring subjects could approve the comments, proposals, conclusions, and opinions and other information; | Unclear why there are only these departments listed. Missing are the Cultural Heritage Protection Directorate and the Municipal Improvements and Environment Protection Department (or Directorate)<br>Missing many from the list in the 2007 Regs. Para 2.1 |
| 15.     | <i>Request for proposals (RFP)</i> is an announcement of investment tender to be published in the printed media soliciting proposals from interested bidders, as specified in clause 5.4 of Chapter V of this Regulation, setting down the terms and conditions of the investment tender, the investment object, and other information specified herein;   | --   |
| 16.     | <i>Tendering authority</i> is the Economic and Investment Directorate of the executive body of the Kyiv City Council (i.e. the Kyiv City State Administration);  | --   |
| 17.     | <i>A package of documents for investment tender (bidding) participation</i> is a set of documents to be submitted to the Working group by a bidder that intends to take part in the investment tender;   | --   |
| 18.     | <i>Pre-investment works</i> constitute the sum total of necessary actions taken by the investment agent in conformity with this Regulation for an investment project preparation purposes;   | --   |
| 19.     | <i>Pre-investment works package of documents</i> are those documents that are prepared by the investment agent in the course of the pre-investment works and are submitted to the tendering authority prior to submission to the Investment Committee for review;  | --   |
| 20.     | <i>Pre-Project proposals</i> are documents prepared by Investment tender initiator or, in cases prescribed by this Regulation, by the investment agent to substantiate feasibility of the implementation of the investment project in conformity with this Regulation;   | --   |
| 21.     | <i>Standing investor attraction tendering commission (hereinafter to be referred as 'Investment Committee')</i> is the standing collegiate body set up by the executive body of the Kyiv City Council (the Kyiv City State Administration) to facilitate the organization, preparation and conduct of investor competitive bids (tender);  | Use of the word 'attraction' is unusual. Its role is to organize and make decisions.   |
| 22.     | <i>Protocol of the Investment Committee</i> is a consolidated document that provides information about the details of deliberations regarding the matters on the agenda of the Investment Committee's meeting and on the decisions approved by the majority of its members following the discussion of relevant points;  | --   |
| 23.     | <i>Registration fee</i> is the fee for the tender documents given and for the registration as contributed by a bidder that intends to take part in the investment tender;  | --   |
| 24.     | <i>Investment project preparation works</i> constitute a set of measures performed by the investment agent, including approvals of pre-project proposals, pre-investment works, information, advertising, marketing and other events, to inform potential investors about the investment project etc.  | Unclear how this is different from row 18. If can include the above should be explained.<br>Appears not to be used below   |
| 25.     | <i>Working group</i> is a standing working body established by the executive body of the Kyiv City Council (the Kyiv City State Administration) to support the activities of the Investment Committee, as well as to process and prepare documents for the Investment Committee's  | Unclear if the members of the working group are KMDA staff members.  |

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
|         | review;   |   |
| 26.     | <i>Concurring subjects</i> are the central bodies of executive power and their regional / territorial offices, the departments of the executive body of the Kyiv City Council (the Kyiv City State Administration), municipal enterprises, institutions and organizations of the Kyiv municipality providing approvals, within their competence, in conformity with the procedure specified herein;     | --  |
| 27.     | <i>Investment tender terms</i> are mandatory requirements to the implementation of an investment project approved by the Investment Committee within the tendering documentation;   | --  |
| 28.     | <i>Bidding participants (bidders)</i> are natural persons, legal entities or private entrepreneurs who expressed their willingness to take part in an investment tender, paid the registration fee by the deadline established, submitted their bid and requisite documents in conformity with this Regulation and with the terms of the tender documentation, and registered by the Working group;     | Registration by the working group conflicts with the segregation of duties internal control principle. Registration and acceptance of official proposals should be an independent position. |
| 29.     | Other terms will be used in the meanings defined in the laws of Ukraine "On investment activity", "On regulation of urban development activities" and other legislative acts.   | Unclear why these two laws are singled out  |
| 30.     | 1.5. Investment objects are to be identified on the basis of the investment initiative announced/declaration and of relevant documents issued by the investment tender initiator in conformity with the procedure prescribed by this Regulation.  | Word 'announced' or declaration is problematic.   |
| 31.     | 1.6. The list of Kyiv municipality property objects, including unfinished construction projects that need reconstruction, rehabilitation etc. and are eligible for tendering, shall be approved by the resolution of the Kyiv City Council in accordance with an established standard procedure.  | --  |
| 32.     | 1.7. If tendering objects are residential construction projects, the investment tender shall be prepared and conducted in line with this Regulation, taking into account the provisions of the law of Ukraine "On financing and lending facilities and property management in housing construction and in real estate transactions", as well as other legislative acts regulating housing construction. | This law is not mentioned in the preamble.  |
| 33.     | 1.8. The decision to transfer the investment object or any of its parts for management by the winner of the investment tender may be made by the executive body of the Kyiv City Council (the Kyiv City State Administration), provided the Kyiv City Council passed the relevant resolution.   | --  |
| 34.     | 1.9. Eligible to be identified as tendering objects may be as follows:  | --  |
| 35.     | - existing houses, buildings, erections of any functional purpose, their complexes, Kyiv municipality engineering and transport infrastructure facilities planned for reconstruction, rehabilitation, major overhaul, refurbishment etc., excepting those that are protected by law;  | Should mention that only those belonging to the city/districts etc. not just any housing.   |
| 36.     | - houses, buildings, structures of any functional purpose under construction, their complexes, Kyiv municipality engineering and transport infrastructure facilities planned for construction, specifically those located on the land owned by the Kyiv municipality;   | --  |
| 37.     | - moveable property, equipment, fixtures or other property owned by the Kyiv municipality;  | --  |
| 38.     | - scientific and technical products, intellectual valuables, and property rights;   | --  |
| 39.     | - other property that is not prohibited by law.   | --  |
| 40.     | Investment objects may be combined into lots.   | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
| 41.     | 1.10. The implementation of an investment project may envision, in particular, the following:   | --  |
| 42.     | - reconstruction, rehabilitation, capital repairs, refurbishment of houses, buildings, structures of any functional purpose, their complexes, and Kyiv municipality engineering and transport infrastructure facilities;  | --  |
| 43.     | - new construction of houses, buildings, erections of any functional purpose, their complexes, engineering and transport infrastructure facilities, in particularly those located on land owned by the Kyiv municipality;   | --  |
| 44.     | - acquisition or upgrading of equipment, provision of services such as management of Kyiv municipality property items, including management of integrated property complexes, as well as other works, services or areas of investing /attracting investments.   | --  |
| 45.     | 1.11. Eligible to bid shall be domestic and foreign individuals, legal entities, and private entrepreneurs, who expressed their interest, by the method established in the Regulation, to invest their own, borrowed and raised capital and/or intellectual valuables in the investment objects and commit to comply with the terms of the investment tender.   | --  |
| 46.     | 1.12. Ineligible to bid shall be the following persons:   | Head of Kiev Internal Audit Department told us that there is a blacklist. This list should be checked             |
| 47.     | - those recognized as insolvent in accordance with the established procedure or those under termination / liquidation;  | --  |
| 48.     | - who failed to furnish the required financial documents as proof of them having sufficient funds to comply with the competitive bidding terms;   | --  |
| 49.     | - who have overdue taxes, levies and charges payable (obligatory payments); or  | --  |
| 50.     | - who fail to comply or fail to comply properly with the terms of previous investment agreements or of other legal instruments on investment commitments entered into, in particular, with structural subdivisions of the executive body of the Kyiv City Council (the Kyiv City State Administration), Kyiv district State administrations, Kyiv municipal enterprises, and Kyiv municipality institutions and organization.   | Verify if this information is readily available. Verify if it is possible to check for other levels of government |
| 51.     | 1.13. The surety contributed by the winner of the investment tender shall not qualify as equity (share) contribution of commissioner to the structures of the city social, engineering and transport infrastructure facilities payable by the commissioner into the Kyiv municipality budget as required by the law of Ukraine "On regulation of urban development activities and by the Regulation on calculating the amount of equity (share) contribution to the erection of the city social, engineering and transport infrastructure facilities as approved by the Kyiv City Council resolution. | --  |
| 52.     | 1.14. All disputes regarding the conduct of the investment tender shall be resolved in conformity with the legislation of Ukraine.  | --  |
| 53.     | <b>II. Investment process participants, their rights and obligations</b>  | --  |
| 54.     | 2.1. An Investment tender initiator shall have the right to:  | --  |
| 55.     | - identify the investment object, set forth the form, type, and investment scope; develop pre-project proposals on his/its own and/or commission the development of pre-project proposals;  | --  |
| 56.     | - obtain the information needed for pre-project proposals development from the concurring subjects;   | --  |
| 57.     | - obtain from the tendering authority written clarification regarding the   | --  |

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
|         | procedure of the conduct of the investment tender;  |   |
| 58.     | - file an application, in accordance with the procedure set forth by this Regulation, to participate in the investment tender and to be an investment tender bidder; and  | This only applies if the initiator is private sector, i.e. not KIA or KMDA.   |
| 59.     | - take other actions as provided for by the legislation of Ukraine and by this Regulation.  | --  |
| 60.     | 2.2. An Investment tender initiator shall:  | --  |
| 61.     | - furnish accurate information, including information about his/its investment activities and presence of reasons that restrict or exclude his engagement in investment activities;   | --  |
| 62.     | - transfer pre-project proposals to the investment agent, by the procedure established herein, for the investment agent to <b>conduct preparations for an investment tender;</b>  | Needs clarification on ramifications if a private investor was the initiator. KIA does not prepare investment tenders. That is the role of the working group.   |
| 63.     | - create no obstacles for participation in the investment tender of other individuals and/or legal entities, private entrepreneurs who sent their applications by the method set forth herein.  | --  |
| 64.     | 2.3. To prepare and conduct investment tenders, the executive body of the Kyiv City Council (the Kyiv City State Administration) will establish the Investment Committee.   | KMDA choosing the Investment Committee is politically risky and may appear non-transparent. Selection criteria should be set.   |
| 65.     | 2.4. The Investment Committee shall operate in compliance with the Ukrainian laws, resolutions of the Kyiv City Council, implementing orders of the Kyiv mayor, the executive body of the Kyiv City Council (the Kyiv City State Administration), and this Regulation.  | --  |
| 66.     | Investment Committee members are personally responsible for decisions approved in conformity with the legislation of Ukraine.   | Legal liability needs to be thought out (see comments in Section E of report)   |
| 67.     | 2.5. The Investment Committee is a collegiate body. The composition of the Investment Committee is formed according to the principle: the deputies of the Kyiv City Council shall make up 50%, and the executive body of the Kyiv City Council (Kyiv City State Administration) another 50%. The composition of the Investment Committee is to be approved by the order of the executive body of the Kyiv City Council (Kyiv City State Administration).  | Consider possibility of the addition of CSO representatives as observers to ensure the investment committee?  |
| 68.     | 2.6. The Head of the Investment Committee shall be the first deputy of the Kyiv City State Administration or KMDA deputy head who coordinates the activity of the Economic and Investment Directorate. The Head of the Investment Committee will have his first deputy (who holds the position of the Director of the Economic and Investment Directorate of the executive body of the Kyiv City Council (Kyiv City State Administration) and a deputy from among deputies of the Kyiv City Council sitting on the Committee. | This could appear not free of conflict of interest if the first deputy head is involved in the real estate industry. Agree with comment from a city councillor that the head should be elected by the Investment Committee although would mean an even number of members. |
| 69.     | The Investment Committee Secretary will be selected from among members of the Investment Committee. In the absence of the Investment Committee Head at its meeting, the meeting shall be chaired by the First Deputy chairman and, in the absence of the latter, by deputy chairman of the Investment Committee.  | Told that the Investment Committee Secretary is KIA's CEO. This affects working group's activities/relationship since   |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>   |
|---------|---|--|
|         |   | this means that the working group reports to the head of KIA.  |
| 70.     | 2.7. In accordance with its tasks, the Investment Committee shall have the right to:  | Some should be obligations as per below  |
| 71.     | - involve in its activity, on a contractual basis, domestic and foreign experts and consultants as advisers;  | --   |
| 72.     | - establish the amount and the method of payment of the registration fee;   | Should be obligation   |
| 73.     | - determine the type, the amount, the terms, the validity period, and the method of putting up the surety;  | Should be obligation   |
| 74.     | - establish the amount of an investment contribution;   | Should be obligation   |
| 75.     | - approve decisions on the conduct of investment tenders vis-à-vis specific investment objects;   | Should be obligation   |
| 76.     | - approve the investment tender terms and conditions based on the pre-investment documents' package;  | Should be obligation   |
| 77.     | - combine investment objects into lots;   | This may require oversight to avoid any appearance of manipulation so that projects are made so large that only certain investors can bid. |
| 78.     | - establish the timeframe for bidders to furnish the package of documents to participate in the competitive bidding;  | Should be obligation   |
| 79.     | - if necessary and in the presence of a justified request of the tendering authority or that of the investment agency, approve a decision to postpone the tendering period prior to the opening of envelopes with the tender proposals; | --   |
| 80.     | - approve the form of the investment initiative statement submitted to the investment agent by the investment tender initiator;   | --   |
| 81.     | - approve the bids form and the RFP text;   | Should be obligation   |
| 82.     | - approve the tender documents;   | Should be obligation   |
| 83.     | - announce that the tender has been cancelled in situations specified herein;   | Should be obligation<br>Cancellation of tenders is not well explained below in fact. Could add in compliance with other legislation.       |
| 84.     | - consider the bids and verify that they meet the requirements of the terms and conditions of the investment tender;  | Should be obligation   |
| 85.     | - ask the bidders to provide additional information in order to finally determine their capacity to meet the requirements stipulated by the tender documentation;   | This must be elaborated to follow tendering best practices and avoid any appearance of favoritism.   |
| 86.     | - sum up results of the competitive bids and to determine its winner;   | Should be obligation   |
| 87.     | - consider matters related to the performance and termination of investment agreements or of other instruments dealing with raising investor capital;   | First two parts should be an obligation  |
| 88.     | - <u>initiate</u> the issuance by the executive body of the Kyiv City Council (Kyiv City State Administration) of an implementing order to transfer the investment project management by the investment tender winner;                  | Unclear – if this is to prepare the implementing orders. This should be rewritten.   |
| 89.     | - establish the deadline and amount of compensation for expense incurred during performance of an investment project preparation works;   | Should be obligation where applicable.   |
| 90.     | - set forth the criteria of the best bid selection;   | Should be obligation   |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
| 91.     | - establish, if necessary, the requirements of the type and amount of the surety to guarantee performance by the tender winner of the obligations under the investment tender terms;   | Should be obligation  |
| 92.     | - give an instruction, if necessary, to the tendering authority to provide analytical and informational materials about the bidders of the investment tender and about their activities for a final selection of the winner;   | Procedures for this must be prepared to avoid contravening best tendering practices   |
| 93.     | - consider the recommendations of the advisory body specified in clause 2.22 herein and make well-grounded decisions on whether to accept or reject such recommendations;  | Should be obligation  |
| 94.     | - approve, without organizing an investment tender, raising investments from individuals, legal entities and private entrepreneurs for construction, reconstruction, and rehabilitation of social, engineering and transport infrastructure of Kyiv Municipality to be totally transferred to and/or included as municipal ownership of Kyiv following the completion or works and their commissioning in the events stipulated by law;        | Needs further explanation as this goes beyond investment tenders which is its basic mandate.  |
| 95.     | - establish the terms of use, during the investment project, of the property of the Kyiv municipality, including charges for placing investment objects at (in) facilities owned by the Kyiv municipality;   | --  |
| 96.     | - set forth, in accordance with an established procedure, the terms of placement of outdoor advertising, of advertisements on Kyiv municipality public transport, of advertisements in elevators of municipal housing projects, and on any piece of Kyiv municipal property, as well as exercise other rights specified herein.  | Note; This activity is not part of KIA. The system of reporting of this unit to the Investment Committee is not specified. Part highlighted in grey is separate in another Ukrainian version. Its inclusion here must be a mistake and it should be a separate point. |
| 97.     | 2.8. The Investment Committee is obliged to:   | --  |
| 98.     | - ensure the organization of investment tenders in accordance with the effective legislation of Ukraine and with this Resolution;  | --  |
| 99.     | - ensure equitable treatment of all bidders.   | --  |
| 100.    | 2.9. Investment Committee meetings are called as needed, but at least once every twenty (20) calendar days. A meeting is called by the Investment Committee chairman at the request of the Investment Committee Secretary or of the tendering authority or of the advisory body specified in clause 2.22 herein. A meeting of the Investment Committee needs a quorum of at least 50% plus one member for the meeting to be legally competent. | Should only be included if this frequency is likely to be achieved. Should consider if no meetings are necessary.   |
| 101.    | 2.10. The Investment Committee shall be approve resolutions on a collegiate basis by a simple majority of votes. If the votes are split evenly, the decisive vote shall be that of the Chairman of the Investment Committee.   | --  |
| 102.    | 2.11. All resolutions of the Investment Committee shall be approved by a show of hands. The agenda of its meetings is to be put together by the Investment Committee Secretary as proposed by the working group and/or by the tendering authority and approved by the Chairman of the Investment Committee.  | --  |
| 103.    | 2.12. The Investment Committee Secretary shall send the draft protocol to all members of the Investment Committee present within three (3) business days of the meeting. In the absence of proposals and/or objections from the Investment Committee members within three (3) business days of receipt, the protocol shall be deemed to be   | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>   |
|---------|---|--|
|         | approved. Having received any proposals and/or objections, the Investment Committee Secretary will review and, if necessary, enter them into the draft protocol.  |  |
| 104.    | The protocol with relevant proposals and/or objections of the Investment Committee members shall be signed by the Secretary (if present at the meeting of the Investment Committee) and the meeting's chairman and sent out to be signed by the members who had been present at the meeting in point.   | --   |
| 105.    | 2.13 Should any member(s) of the Investment Committee fail to attend its meeting for no good reason three or more times in a row or refuse to sign the protocols of its meetings, the chairman, first deputy or deputy chairman of the Investment Committee may initiate a move to strip said member(s)' Investment Committee membership. Following the deliberation of this matter at the meeting of the Investment Committee, its members take a vote and, based on the voting result, exclude said member(s) from the composition of the Investment Committee by way of the Kyiv City Council (Kyiv City State Administration) issuing an implementing order to this effect. | Need explanation for nomination of the replacement of the member removed                   |
| 106.    | 2.14. The Investment Committee shall have the right to postpone the date of the investment tender. Within two (2) business days, the postponement notice shall be sent out by the working group to all bidders no later than on the last day of the solicitation period.  | Needs further explanation of grounds for postponement                                      |
| 107.    | 2.15. Protocols of the Investment Committee's meetings shall be drawn up by its Secretary, while the working group shall prepare annexes thereto.   | --   |
| 108.    | 2.16. The powers of the tendering authority shall be as follows:  | --   |
| 109.    | - review, approve or send for elaboration the package of pre-investment documents;  | --   |
| 110.    | - ensure publication of announcements regarding the conducting of the investment tender;  | Confusing as DEI is responsible for advertising. The word 'ensure' is problematic.         |
| 111.    | - provide tender documentation to the bidders and give them clarifications on matters pertaining to the conduct of the investment tender, as well as inform them of amendments to the investment tender terms;  | Contradicts Para. 5.9, row 263, where the working group supplies the tender documentation. |
| 112.    | - based on the decisions of the Investment Committee, draft resolutions of the Kyiv City Council and implementing orders of the executive body of the Kyiv City Council (Kyiv City State Administration) needed to organize, conduct and ensure compliance with the terms of the investment tender;   | --   |
| 113.    | - whenever it may prove necessary, send a request, by the method prescribed by law, for concurring subjects to provide additional opinions /conclusions and/or information on matters pertaining to the conduct of investor bidding. The concurring subjects are to provide such opinions /conclusions and/or information within five (5) business days of receipt of the query, excepting the central bodies of executive power and their regional offices which will furnish the opinions /conclusions and/or information requested by the deadline prescribed by law;  | --   |
| 114.    | - enter into an investment agreement with the investment tender winner, the investment project implementation commissioner, and other person(s) provided the Investment Committee has issued a decision to this effect;   | --   |
| 115.    | - notify the investment tender winner and the other bidders of the outcome of the investment tender;  | --   |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
| 116.    | - review and provide the final approval of an investment agreement with the investment tender winner, the investment project implementation commissioner, and other person(s), provided the Investment Committee has issued a decision to this effect based on the terms and conditions agreed and on the relevant provisions of this regulation and of the Ukrainian legislation;   | --  |
| 117.    | - provide material and technical support for investor competitive bids conduct;  | In accordance with best tendering practices, this task has to be defined in internal regulations to avoid any appearance of favouritism   |
| 118.    | - file reports with the Investment Committee on the performance under investment agreements;   | --  |
| 119.    | - facilitate, within its competence, complete, timely and proper performance of the terms of investment agreements;  | --  |
| 120.    | - organize investment tenders;   | --  |
| 121.    | - monitor the investment tenders' implementation;  |   |
| 122.    | - if necessary, amend and expand or terminate the investment tender in cases specified by this regulation and by Ukrainian laws in accordance with the procedure prescribed; and   | --.   |
| 123.    | - carry out any other functions provided for herein.   | --  |
| 124.    | 2.17. To organize the Investment Committee' operation, the executive body of the Kyiv City Council (Kyiv City State Administration) shall establish a working group.   | --  |
| 125.    | The working group shall consist of at least three persons to be approved by the implementing order of the executive body of the Kyiv City Council (Kyiv City State Administration) at the request of the tendering authority based on the proposal of the Investment Committee Secretary. The working group is run by the Investment Committee Secretary.  | Should define the selection method and who is eligible. It is unclear if they are KMDA or KIA staff. As described, these are sensitive positions for several reasons including that they can also decide if bidders are ineligible. |
| 126.    | The working group decisions shall require a simple majority of its members, and in case of equally split votes, the working group head's vote shall be decisive. Working group decisions shall be documented in the form of a working group meeting protocol to be signed by the working group head.   | Meeting minutes should be signed by all members since important decisions are made.   |
| 127. ,  | The working group shall have the powers to involve in its work, in accordance with an established procedure, experts of departments and units of the executive body of the Kyiv City Council (Kyiv City State Administration), Kyiv district State administrations, municipal enterprises, institutions and organizations of the Kyiv municipality.  | --  |
| 128.    | 2.18. The working group shall:   | Overall, there are issues of segregation of duties  |
| 129.    | - review on its own or, if need be, jointly with the relevant departments of the executive body of the Kyiv City Council (Kyiv City State Administration), Kyiv district State administrations, municipal enterprises, institutions and organizations of the Kyiv municipality, the information and documents received from the tendering authority to develop recommendations and proposals for the Investment Committee to consider; | --  |
| 130.    | - prepare on its own or, if need be, jointly with the relevant departments of the executive body of the Kyiv City Council (Kyiv City   | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         | State Administration), Kyiv district State administrations, municipal enterprises, institutions and organizations of the Kyiv municipality, proposals for the Investment Committee regarding the issues within the Investment Committee's competence, including the investment tender terms and conditions;  |   |
| 131.    | - organize meetings of the Investment Committee and prepare materials to be reviewed by the Investment Committee;  | --  |
| 132.    | - keep the records and register document packages submitted to take part in the investment tender bidding;   | This is a segregation of duties issue – these duties should be done by an independent party.                      |
| 133.    | - draft the tender documentation and submit it to the Investment Committee for review;   | --  |
| 134.    | - analyse the package of bidding documents, check if these comply with the legislation, with this regulation, and with the requirements to the tender documentation, as well as identify circumstances that disqualify bidders from admittance to the investment tender participation under the provisions of this regulation and of the legislation of Ukraine; | Contravenes best tendering practice in that the working group sees the proposals before the Investment Committee. |
| 135.    | - provide comments to the documents received from bidders, return these documents to bidders and register bidders in accordance with the procedure prescribed by this regulation;  | See comment directly above  |
| 136.    | - perform other functions specified herein.  | --  |
| 137.    | 2.19. Bidders (Investment tender participants) shall have the right to:  | --  |
| 138.    | - attend the opening of envelopes with bids;   | --  |
| 139.    | - offer additional documents to substantiate their bid proposals;  | --  |
| 140.    | - get to know the obligations and commitments of the tender winner and   | --  |
| 141.    | - exercise other rights by the method and on the terms specified by this regulation and by the Ukrainian legislation.  | --  |
| 142.    | 2.20. Bidders shall:   | --  |
| 143.    | - provide accurate information verifiable by documents in the investor bidding package;  | --  |
| 144.    | - refrain from creating any obstacles for the work of the Investment Committee and of other investment tender participants;  | --  |
| 145.    | - pay the registration fee on time and in full;  | --  |
| 146.    | - if selected as the investment tender winner, sign the investment agreement promptly and compensate all expense incurred in the course of the investment tender preparation works in accordance with this regulation;   | What can be included for compensation should be outlined in at least another document.                            |
| 147.    | - carry out other tasks as provided for by the legislation of Ukraine and by this Regulation.  | --  |
| 148.    | 2.21. The Investment agent shall perform the following functions:  | Another Ukrainian version has 'Entry into the register, analysis of work on the investment proposals.             |
| 149.    | - provide to the Investment tender initiator the opinion as to the expedience / inexpedience of subsequent development of pre-project proposals;   | --  |
| 150.    | - provide consultations on matters pertaining to the participation in investment projects;   | Need to define and limit to avoid appearance of favouritism and to comply with best tendering practices           |
| 151.    | - initiate investment projects;  | --  |
| 152.    | - perform works to develop an investment project in the scope and by   | --  |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         | the method specified herein;   |   |
| 153.    | - inform potential investors on the conduct of investment tenders, their terms and conditions, organizing relevant promotion and advertising events etc.;  | Needs to be done only after published in media as in Para. 5.4 to avoid accusations of favouritism  |
| 154.    | - monitor compliance with the investment tender terms and conditions in the course of its implementation, if the Investment agent is party to this investment tender;  | Apparently this is when KIA is the Investment Project Implementation Commissioner but this is not self-explanatory – could be clarified                                       |
| 155.    | - perform other works needed to develop an investment project;   | --  |
| 156.    | - perform other duties specified herein and in the incorporation documents of the investment agent.  | --  |
| 157.    | 2.22. For the purpose of monitoring investor process subjects' compliance with the requirements of effective legislation and of this Regulation, and for control purposes, the executive body of the Kyiv City Council (Kyiv City State Administration) may set up an advisory body whose members may include independent experts, business and representatives of civilians, foreign specialists and other persons, or the above functions may be assigned to the currently existing consultative-and-advisory bode established under the executive body of the Kyiv City Council (Kyiv City State Administration). | Clarify why 'may' and not 'shall'.  |
| 158.    | The name, the procedure of appointing members, the rights and obligations etc. of this advisory body shall be defined in the bylaw of this body.   | --  |
| 159.    | Investment process subjects shall have the right to contact the above body as regards actions or inaction of other subjects (participants) of the investment process.  | To clarify: why only those involved in the investment process? Should clarify if CSOs or citizens should be allowed to make complaints/ grievances to this body or otherwise. |
| 160.    | To perform their functions, representatives of the above body shall be entitled to attend the Investment Committee's meetings and present their position, having studied the tender documentation and other documents envisioned herein.   | Must clarify that this is not related to choosing tender winners.   |
| 161.    | Based on the result of reviewing requests received or on its own initiative, the above body has the right to provide the Investment Committee with recommendations on ways to address the objections/comments. Such recommendations shall be considered by the Investment Committee at its nearest meeting.  | --  |
| 162.    | <b>III. Addressing proprietary law matters during the organization and conduct of Investment tenders</b>   | --  |
| 163.    | 3.1. Should the property, such as houses, buildings, premises, attics, etc., or part thereof, land or portions thereof, where the investment project is planned to proceed, be owned or used by private individuals or legal entities, the investment tender initiator shall develop and agree in writing with the owners (co-owners) or operators / users of such property the proposals regarding possible options for the resolution of proprietary law issues and get a properly notarize written consent from such persons.   | --  |
| 164.    | 3.2. Having developed proposals regarding possible options for the resolution of proprietary law issues as provided for in the preceding clause 3.1, the investment tender initiator shall submit the options proposed to the Investment agent along with the pre-project proposals.   | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
| 165.    | <b>IV. Investment project initiation, development of pre-project proposals, and carrying out of pre-investment works.</b>   | --  |
| 166.    | 4.1. To implement an investment project, the investment tender initiator shall send to the Investment agent a statement of the investment initiative in the format approved by the Investment Committee, enclosing his available documents and materials on the investment project.   | --  |
| 167.    | 4.2. Within five (5) business days, the investment agent shall complete an analysis of the documents received and shall come to a conclusion regarding expediency /inexpediency of further consideration of the investment project and whether or not the documents are sufficient.   | --  |
| 168.    | If the investment agent believes it is worth continuing the consideration of the investment project, it will send the documents received from the investment tender initiator to the concurring subjects which will review them and offer, within their competence, opinions on the investment project feasibility and, if necessary, the technical requirements of relevant departments/units of the executive body of the Kyiv City Council (Kyiv City State Administration) to the investment object/property proposed.  | --  |
| 169.    | Opinions of the investment project feasibility offered by the concurring subjects (relevant structural subdivisions of the executive body of the Kyiv City Council (Kyiv City State Administration)) shall include, in particular, the following information:   | It is unclear why this list is reduced from that in the 2007 regulations. |
| 170.    | - the opinion of the Land Resources Department of the executive body of the Kyiv City Council (the Kyiv City State Administration) regarding the land plot(s) in question belonging to the Kyiv municipality, taking into account the municipal land cadaster data, compliance of the investment project initiated to the land legislation of Ukraine, presence / absence of applications to obtain permits to develop project land allocation documents, City of Kyiv Council resolutions to allocate the land plot(s) for use (or to transfer title thereto), on which land the investment objects /projects are proposed to be completed etc.; | --  |
| 171.    | - the opinion of the Urban Development and Architecture of the executive body of the Kyiv City Council (the Kyiv City State Administration) regarding the possibility of setting up the proposed investment object in line with the requirements of the urban development legislature of Ukraine, the General Construction Plan of the City of Kyiv, the zoning, other urban development documents, the city construction program, projects, sector development schemes, the existing restrictions of the territory planning, the restrictions regarding landscaping architecture, comprehensive territory improvements etc.;                     | --  |
| 172.    | - the opinion of the Kyiv Municipal Property Ownership Department of the executive body of the Kyiv City Council (the Kyiv City State Administration) regarding the possibility of construction, reconstruction, rehabilitation, capital repairs, and refurbishments on the Kyiv municipal projects /facilities, including unfinished construction projects owned by the Kyiv municipality, the parameters of such property, the amount of payouts and compensations (if at all) etc.;  | --  |
| 173.    | - the opinion of the Cultural Heritage Protection Directorate of the executive body of the Kyiv City Council (the Kyiv City State Administration) regarding the status of the territory, house, of another property, as well as information about the architectural restrictions, about the requirements to cultural heritage objects protection etc.;  | --  |
| 174.    | - the opinion of the Municipal Improvements and Environment Protection Department of the executive body of the Kyiv City Council (the Kyiv City State Administration) regarding the assessment of the impact of commercial operations of the proposed investment objects  | --  |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         | on the natural environment etc.  |   |
| 175.    | In this case, the concurring subjects shall consider and approve the opinion and the technical requirements to the investment property within five (5) business days, excepting the central bodies of executive power and their regional offices which will consider and furnish their opinions by the deadline prescribed by law.   | --  |
| 176.    | Once the concurring subjects have provided the opinions on the feasibility of the implementation of an investment project, the investment agent shall analyze them and, in case of positive conclusions by the concurring subjects, write up and furnish its opinion to the tendering authority regarding feasibility of conducting the relevant investment tender, along with a substantiation of this opinion and of the concurring subjects' opinions, and shall provide this information to the Investment tender initiator. | --  |
| 177.    | 4.3. The tendering authority will send the opinion on the feasibility of the relevant investment tender, along with the substantiation of the concurring subjects' opinions, to the working group and ask that the working group submit for the Investment Committee's review the matter of recognition of the proposed project as an investment object that is good enough to proceed with the conduct of an investment tender.   | (Ukrainian version paragraph number missing)  |
| 178.    | 4.4. Following the review by the Investment Committee and its decision recognizing the object proposed as an investment object, the tendering authority shall develop a draft implementing order and submit it to the executive body of the Kyiv City Council (the Kyiv City State Administration) for approval of the Investment Committee's decision;  | See row 402, paragraph 7.1.1  |
| 179.    | An implementing order of the executive body of the Kyiv City Council (the Kyiv City State Administration) specified in the preceding paragraph shall be issued:  | Should explain that this is an additional implementing order from the one in row 178 as confusing as written now. |
| 180.    | - if investments are expected for reconstruction, completion of unfinished construction, rehabilitation, capital repairs, refurbishments etc. of Kyiv municipal property, - once the Kyiv City Council passes a resolution specified in clause 1.1 of Chapter I herein regarding such projects/facilities;   | --  |
| 181.    | - if it is necessary to knock down non-residential houses, buildings etc. for an investment project to be implemented, - once the Kyiv City Council passes a resolution specified in clause 6.16 of Chapter VI herein.   | --  |
| 182.    | 4.5. If the investment agent decides that it is impossible to go ahead with a relevant investment tender, including the concurring subject(s)' negative opinion(s), the investment agent shall turn down the proposal of the investment tender initiator in writing and with the underlying reasons disclosed.   | There must be a procedure to notify Investment Committee, oversight board and KMDA.                               |
| 183.    | If the investment agent decides, in keeping with clause 4.2 of chapter 4 herein, that it is necessary to elaborate further the investment initiative and/or to demand additional documents, it will notify of this the investment tender initiator. Should the investment agent's comments and proposals be disregarded by the investment tender initiator for ten (10) business days, this investment tender may be initiated by another person in accordance with the procedure specified herein.                              | --  |
| 184.    | 4.6. Following the issuance of the implementing order by the executive   | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>   |
|---------|--|--|
|         | body of the Kyiv City Council (the Kyiv City State Administration) specified in clause 4.4 above, all investment initiative applications of the other investment tender initiators regarding the same investment object, whose implementation will complicate or make the implementation of the original (approved) investment project impossible, shall be rejected.  |  |
| 185.    | Should several investment tender initiators submit investment initiative proposals, and it proves impossible to implement these multiple investment project simultaneously, the investment agent shall consider the investment initiative proposal that had been the first to be submitted and registered.   | Consider more flexibility so that they can choose the best initiative but should be required to submit their reasons for not taking the first to avoid appearance of manipulation.<br>This is not in agreement with paragraph 4.12 |
| 186.    | 4.7. Should the investment agent, having considered the proposal of the investment tender initiator or in the course of preparing a pre-investment project, come to a conclusion that it is necessary to apply procedures whose method is specified by the legislation of Ukraine (concession, lease, privatization etc.), the investment agent shall notify the investment tender initiator and the tendering authority of the need to apply such procedures. | --   |
| 187.    | For the purpose of getting consultations regarding legal, organizational, economic and other mechanisms involved in the implementation of such projects, the investment tender initiator may choose to enter into relevant agreements with the investment agent.   | --   |
| 188.    | 4.8. Following the issuance of the implementing order by the executive body of the Kyiv City Council (the Kyiv City State Administration) specified in clause 4.4 above, the investment tender initiator shall start developing the pre-project proposals. For the purpose of developing the pre-project proposals, the investment tender initiator may choose to enter into a relevant agreement with the investment agent or another person.                 | --   |
| 189.    | If the investment tender initiator happens to be a structural subdivision of the executive body of the Kyiv City Council (the Kyiv City State Administration), a Kyiv district State administration or another body of executive power or of local self-government, pre-project proposals shall be developed by the investment agent without entering into agreements.   | Unclear why no agreement is required..   |
| 190.    | 4.9. The investment tender initiator and/or the investment agent shall develop pre-project proposals within ten (10) business days of the issuance of the implementation order by the executive body of the Kyiv City Council (the Kyiv City State Administration) as specified herein in clause 4.4 above.  | Note: Paragraph below allows for an extension.   |
| 191.    | Should the investment tender initiator fail to submit to the investment agent, its pre-project proposals by this deadline or fail to notify it of the justified need to extend this deadline, this person shall lose the status of the investment tender initiator under this project. The investment agent shall notify it of this fact, and a similar investment project may be initiated by another investment tender initiator.                            | Should specify if KIA itself decide whether reason is justified. If an issue should have recourse to the Investment Committee.   |
| 192.    | 4.10. Pre-project proposals shall be made up of the narrative and graphic sections and shall meet the requirements specified in the investment agent's opinion as to the feasibility of implementing the corresponding investment tender as regards the development of pre-project proposals to comply with clause 4.2 above.  | --   |
| 193.    | Pre-project proposals shall include:   | Should include outline of the benefits to the city.  |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         |  | This is crucial. Need a checklist for what to be considered/ included. (See Para. 6.2.48 in 2007 Regs.)   |
| 194.    | - the explanatory note;  | --  |
| 195.    | - situation analysis and photos;   | --  |
| 196.    | - brief characteristic of the investment object;   | --  |
| 197.    | - tentative technical and economic performance indicators  | --  |
| 198.    | - other documents (if available);  | --  |
| 199.    | - the latest cadastre plan;  | --  |
| 200.    | - the situational site layout outline;   | --  |
| 201.    | - the general construction plan of the investment object to the M 1:500 or M 1:1200 scale;   | --  |
| 202.    | - traffic and pedestrian flow chart;   | Analysis of parking should be added here as tends to be forgotten apparently.   |
| 203.    | - floor, façade house and building cross-section plans (if available);   | --  |
| 204.    | - demo materials with maximum capacity parameters;   | --  |
| 205.    | - proposals, conclusions, letters, and clarifications regarding the resolution of property ownership issues;   | --  |
| 206.    | - proposals as regards the economic and financial model of the investment project implementation.  | See above re social impact/benefits to city or residents. This should be further emphasized.  |
| 207.    | The composition of pre-project proposals shall meet the requirements of the legislation of Ukraine, construction code norms, State standards and rules.  | --  |
| 208.    | 4.11. Having developed the pre-project proposals, the investment tender initiator shall send them to the investment agent for the preparation of an investment project.  | Slight error – it is to prepare the pre-investment works.--   |
| 209.    | 4.12. Thereupon, within five (5) business days or, if additional elaboration is needed, within 14 business days, the investment agent shall analyse the pre-project proposals of the investment tender initiator and approves them by its opinion where it confirms that the pre-project proposals comply with the requirements of this regulation and of the legislation of Ukraine, and regarding the effective appropriation and utilization of resources belonging to the Kyiv municipality. Should the pre-project proposals fall short of the requirements of this regulation and of the legislation of Ukraine or should the investment agent identify more effective ways to utilize resources belonging to the Kyiv municipality, it shall return the pre-project proposals to the investment tender initiator for elaboration, pointing out concrete flaws identified and proposals offered. | Circumstances should be defined as this is quite late in the process. Regulations should require that the change and its justification must be submitted to the Investment Committee<br>Re finding more effective way to utilize the resource, this does not match Para. 4.6. |
| 210.    | Should the investment tender initiator fail to take into account the comments and proposals of the investment agent within ten (10) business days, this person shall lose the status of the investment tender initiator under this project. The investment agent shall notify it of this fact, and a similar investment project may be initiated by another investment tender initiator.   | --  |
| 211.    | 4.13. Once the pre-project proposals have been approved, the investment agent shall perform the pre-investment works within twenty (20) business days.   | --  |
| 212.    | If it was the investment agent that had developed the pre-project proposals, it shall set about the investment project development works without having to approve the pre-project proposals, in which case the  | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         | pre-project proposals development shall be included in the investment project development works.   |   |
| 213.    | 4.14. The pre-investment works to be performed by the investment agent shall include:  | --  |
| 214.    | - approvals of the pre-project proposals with the concurring subjects, and obtaining from them, if need be, additional opinions and/or information, proposals, recommendations on matters pertaining to the conduct of the investment tender (the investment project implementation);  | --  |
| 215.    | - obtaining urban development terms and restrictions (if possible);  | --  |
| 216.    | - obtaining statistical, expert, analytical, marketing, financial conclusions etc;   | --  |
| 217.    | - development and collection of opinions, letters, clarifications regarding the resolution of property ownership issues;   | --  |
| 218.    | - development of a proposal on the economic and financial model to implement the investment project;   | --  |
| 219.    | - proposals regarding ways to resolve property ownership issues (if necessary);  | --  |
| 220.    | - development of proposals regarding the investment tender terms and conditions, including proposals regarding the selection of the investment project implementation commissioner;  | --  |
| 221.    | - development of a draft investment agreement;   | --  |
| 222.    | - other works.   | --  |
| 223.    | Types of pre-investment works to perform on each investment project shall be established by the investment agent, taking into account special features of such investment projects.  | Internal procedures required.   |
| 224.    | 4.15. To have the pre-project proposals approved by the concurring subjects, obtain from them, if need be, additional opinions and/or information, proposals, recommendations on matters pertaining to the conduct of the investment tender (the investment project implementation), the investment agent shall submit to the concurring subjects the pre-project proposals as specified in clause 4.10 above. | --  |
| 225.    | 4.16. To perform investment project development works, the investment agent may enter into agreements with third parties to render the corresponding services. The cost of such services may be included as a line item into the cost of investment project development works.   | Presume that having a line item is to make the accounting easier.   |
| 226.    | 4.17. Based on the results of the pre-investment works performance, the investment agent shall submit to the tendering authority a package of pre-investment documents, which shall include:   | --  |
| 227.    | - the pre-project proposals approved by the concurring subjects;   | --  |
| 228.    | - the urban development terms and restrictions (if possible);  | --  |
| 229.    | - proposals on the economic and financial model to implement the investment project;   | --  |
| 230.    | - proposals regarding the investment tender terms and conditions; and  | --  |
| 231.    | - other documents, if needed.  | --  |
| 232.    | 4.18. The investment tender initiator's expense incurred in the development of the pre-project proposals shall not be reimbursed.  | If the initiator is a KMDA unit or municipal enterprise, this may act as a deterrent since funds will be limited. Perhaps reconsider for investment tenders that are completed. |
| 233.    | The investment agent's cost of the investment project development works shall be reimbursed by the winner of the investment tender in  | 'No less' than 1% is objected to by American  |

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>   |
|---------|---|--|
|         | the amount to be determined by the Investment Committee on the basis of the budgeted cost estimate, but at no less than 1% of the estimated cost of the investment project implementation.  | Chamber of Commerce. Perhaps, a cap where it switches to .5 or different percentages for different categories of investments. This will encourage low bids with subsequent extensions. |
| 234.    | The cost of the investment project development works shall be reimbursed within ten (10) business days of the investment agreement execution date, unless the Investment Committee decides otherwise by its resolution.   | Timing is tight. Consider within 30 days and some sort of recourse if not paid within this term.   |
| 235.    | <b>V. Conduct of the investment tender</b>  | --   |
| 236.    | 5.1. Within five (5) business days or, if additional elaboration is needed, within 14 business days of receipt of the pre-investment package of documents from the investment agent, the tendering authority shall review and approve and also have the investment project implementation commissioner review and approve the package of pre-investment documents (if they differ from those submitted by the investment agent) and by other structural subdivisions of the executive body of the Kyiv City Council (the Kyiv City State Administration), by Kyiv City municipal enterprises, institutions and organizations, whose rights and obligations shall be regulated in the course of the investment project implementation.   | Unclear as to how the package will differ from those submitted by the investment agent.  |
| 237.    | For elaboration of the pre-investment documents' package, the tendering authority shall be entitled to involve the relevant structural subdivisions of the executive body of the Kyiv City Council (the Kyiv City State Administration), Kyiv City municipal enterprises, institutions and organizations, legal entities, individuals, and private entrepreneurs in accordance with the prescribed procedure.   | --   |
| 238.    | Having studied the pre-investment documents' package, the tendering authority shall send it back to the investment agent for elaboration, along with well-grounded comments / objections or, in the absence of objections, shall send it to the working group with a request to initiate with the Investment Committee the matter of passing a decision to conduct the investment tender and to approve the tender documentation and the RFP text.  | --   |
| 239.    | 5.2 Within five (5) business days or, if additional elaboration is needed, within 14 business days of receipt of the pre-investment documents' package from the tendering authority, the working group shall prepare materials to be submitted to the Investment Committee for review, develop the tender documentation and the proposals for the Investment Committee on the investment tender terms and conditions, including the timeline of the investment tender terms, the registration fee amount, the surety terms and amount, the investment contribution amount, and other issues, and, should there be sufficient materials, shall propose that the Investment Committee's secretary put this matter on the draft agenda of the nearest session of the Investment Committee. | --   |
| 240.    | The tender documentation developed by the working group shall be put up for the Investment Committee's review, once the matter on the draft agenda of the nearest session of the Investment Committee.  | --   |
| 241.    | Proposals regarding the terms and conditions of the investment tender shall be developed separately for each investment object, taking into account their special features and the information specified in the pre-investment documents' package.  | --   |
| 242.    | 5.3. The meetings of the Investment Committee shall be called by its Chairman in conformity with this regulation, with the agenda proposed.   | --   |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
|         | The working group shall see to it that the Investment Committee members have materials dealing with matters on the agenda.  |   |
| 243.    | If the Investment Committee approves a resolution to organize the investment tender, the Investment Committee shall also approve the tender documentation and the text to announce the tender and solicit bids (the RFP text), as well as establish the deadline for bids to be submitted, which shall not be shorter than twenty one (21) calendar days after the RFP is out.                      | --  |
| 244.    | 5.4. Upon a request of the Investment Committee, the tendering authority shall publish the RFP in the "Uryadovy Kuryer ( <i>Governmental Courier</i> )", the "Khreshchatyk", the "Ukrainska Stolytsa ( <i>Ukrainian Capital City</i> )" or the "Investytsiyina Gazeta ( <i>Investment Newspaper</i> )" or in another printed media and post it on the official website of the Kiev City Government. | It should be made obligatory that all RFPs are automatically posted in the government paper and on website within 5 (or something similar) working days of the Investment Committee's decision after the tender documentation has been finalised<br>Should add international advertising, when warranted, and that other media beside printed media must be allowed. Para. 6.2.29 of the 2007 regulations in fact includes all media.<br>Appears that KIA is publicizing on free internet sites. The relationship should be formalized. |
| 245.    | The publication date of the RFP shall be the day on which it was promulgated.   | --  |
| 246.    | 5.5. The RFP shall contain the following information:   | --  |
| 247.    | - the resolution of the Investment Committee on the basis of which the tender is to be conducted;   | --  |
| 248.    | - the investment facility/project (its name, tentative technical and economic details, etc.);   | --  |
| 249.    | - the scope of works to be financed by the investor, as well as the amount of the investment contribution;  | --  |
| 250.    | - the obligation of the bids winner to reimburse to the investment agent the cost of the investment project development works by the method and on the terms specified in clause 4.18 above;  | The RFP should include the amount of the pre investment works cost to be refunded if more than 1%.  |
| 251.    | - the registration fee amount and method of payment;  | --  |
| 252.    | - the deadline by which the proposals should be submitted;  | --  |
| 253.    | - the period of time during which the tender documentation may be received, the venue and the terms of the tender documentation receipt;  | --  |
| 254.    | - the address and the work hours of the working group;  | General issues concerning interaction of the working group with bidders.  |
| 255.    | - the principal criteria to select the winner of the investment tender;   | --  |
| 256.    | - the venue, date and time opening envelopes with bids; and   | --  |
| 257.    | - other documents to be specified by the Investment Committee.  | --  |
| 258.    | 5.6. Once the Investment Committee takes a decision to conduct the investment tender, the investment agent shall start disseminating the  | It should not be before it is officially announced on the   |

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
|         | information about the investment tender announced among the potential investors, including but not exclusively, by way of information and advertising campaigns, presentations, discussions etc.  | website/government newspaper to avoid complaints of favouritism   |
| 259.    | Once the RFP is out, the investment agent shall have the right to provide information to potential investors on the key indicators of the investment object and the investment tender terms, including the information provided in the package of pre-investment documents dealing with this investment project.  | Should be carefully controlled: need to set parameters of what information can be given. Standard practice is to give date by when the bidders can submit questions and then the questions and their answers are sent to all registered bidders to ensure all are treated fairly. |
| 260.    | 5.7. Following the RFP publication, any individual, legal entity of private entrepreneur who wishes to participate in the bidding and has paid the registration fee shall be entitled to receipt of the tender documentation.   | --  |
| 261.    | The funds paid by the bid participants as the registration fee are non-refundable.  | --  |
| 262.    | 5.8. The funds paid by the bidders as the registration fee and by the winner of the investment tender as the investment contribution shall be used to create and improve the social, engineering and transport infrastructure of Kyiv Municipality.   | Can this be achieved? Does it go into a special revenue account? How is this administered?  |
| 263.    | 5.9. Tender documentation (with the pre-investment documents' package being sent out electronically) shall be provided by the working group to authorized representatives of the bidders who had paid the registration fee and turned up at the address specified in the RFP. The fact of the issue of the tender documentation shall be entered by the working group into the relevant registry of the tender documentation issue.             | Contradicts Para. 2.16, row III where DEI furnishes the tender documentation.   |
| 264.    | 5.10. The tender documentation shall include:   | -- (Other Ukrainian version – includes as first point: “General information about the object to be included.”)  |
| 265.    | - the investment tender terms and conditions, including the general information about the investment object, principal and additional criteria to evaluate the bids and to select the winner, the amount to be reimbursed to the investment agent for expense related to the performance of the investment project development works by the method and on the terms specified in clause 4.18 above;   | --  |
| 266.    | - the qualification criteria regarding investment tender bidders (their financial capacity and absence of disqualifying circumstances barring their admittance to the tender, as specified in clause 1.12 above);   | --  |
| 267.    | - the guidelines for bidders, which includes information about the address and deadline for them to send their bidding documents, telephone and fax numbers of the working group, the method of bidders' notification of possible changes in the submission deadline and of other amendment to the tender documentation, and the date, time and venue of opening the envelopes with tender proposals;   | --  |
| 268.    | - the contents and method of developing, formalizing and submitting the package of documents for investment tender bidding (the requirements for completeness of the documents submitted, the procedure to sign and notarize documents, make corrections therein, the requirements to packaging, marking and sealing the documents, the method of their delivery, and the method of making amendments to the package of the bidding documents); | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>   |
|---------|---|--|
| 269.    | - the application form to take part in the investment tender;   | Unclear if this is different from the row below: perhaps application for tender documentation. |
| 270.    | - the form of the tender proposal;  | See above, row 269   |
| 271.    | - the pre-investment package of documents;  | --   |
| 272.    | - the requirements regarding the type and amount of the surety and, if necessary, the type and amount of money committed as guarantee that the investment tender winner will carry out the obligations specified in the investment agreement; | --   |
| 273.    | - the information about the language(s) of the bidding documents to be submitted; and   | --   |
| 274.    | - other documents (as required by the Investment Committee).  | --   |
| 275.    | 5.11. The package of investment tender participation documents to be submitted to the working group by an individual who wishes to bid and has paid the registration fee shall include:   | --   |
| 276.    | (a) an application to take part in the investment tender;   | --   |
| 277.    | (b) the documents (properly notarized copies of the documents) to be attached to the above application; and   | --   |
| 278.    | (c) the tender proposal.  | This contravenes best international tendering practice   |
| 279.    | 5.12. The application to take part in the investment tender shall include:  | --   |
| 280.    | a) if the bidder is a natural person:   | --   |
| 281.    | - the date of filing;   | --   |
| 282.    | - the name of the investment facility/project ;   | --   |
| 283.    | - the bidder's surname, first name, patronymic and other passport details of the bidder;  | --   |
| 284.    | - banking account details; and  | --   |
| 285.    | - the bidder's address, phone and fax numbers;  | --   |
| 286.    | b) if the bidder is a sole proprietorship:  | --   |
| 287.    | - the date of filing;   | --   |
| 288.    | - the name of the investment facility/project ;   | --   |
| 289.    | - the bidder's full name, address, phone and fax numbers;   | --   |
| 290.    | - the date, place and name of the registration authority; and   | --   |
| 291.    | - the bidder's bank account details;  | --   |
| 292.    | c) if the bidder is a legal entity:   | --   |
| 293.    | - the date of filing;   | --   |
| 294.    | - the name of the investment facility/project;  | --   |
| 295.    | - the bidder's full name, legal address, contact phone and fax numbers;   | Should check beneficial owners to blacklists.  |
| 296.    | - the date and place or its registration and the name of the registration authority;  | --   |
| 297.    | - the bidder's legal and organizational form;   | --   |
| 298.    | - general information about the authorized officials of its governing body;   | The general information required should be specified somewhere.                                |
| 299.    | - information about persons who are authorized to act on behalf of the bidding legal entity and have signatory power; and   | This information required should be specified somewhere.                                       |
| 300.    | - details of the bidder's bank accounts.  | --   |
| 301.    | 5.13. The documents to be attached to the application to participate in an investment tender shall include:   | --   |

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>   |
|---------|---|--|
| 302.    | a) duly certified copies of the articles of incorporation of the legal entity that applies for participation in the investment tender;  | --   |
| 303.    | an extract from the Unified State Register of Legal Entities and individuals-entrepreneurs of the bidder;   | --   |
| 304.    | documents (extract from trade, bank or court register etc.) confirming the registration of the legal entity in the country of residence (for non-residents);                          | --   |
| 305.    | a copy of the passport and the registration number of the taxpayer's record keeping card – for physical persons;  | Should verify that the reference to physical persons is correct in Ukrainian     |
| 306.    | b) documents and information confirming that the bid participant is able to provide adequate funding for the investment activity, namely:   | --   |
| 307.    | If the bidder is a private entrepreneur:  | --   |
| 308.    | - the tax statement of the self-employed taxpayer (for a simplified taxation system purposes);  | Perhaps include requirement for stamp and to be notarised.                       |
| 309.    | - the assets and income statement (for the regular taxation system purposes);   | Perhaps include requirement for stamp and to be notarised.                       |
| 310.    | - a certificate issued by the IRS confirming absence of tax arrears;  | Must be recent. Should add the word 'current'. See row 317 as well.              |
| 311.    | If the bidder is a resident legal entity:   | --   |
| 312.    | - the balance sheet (Form 1) for the latest reporting year;   | --   |
| 313.    | - the income statement (Form 2);  | --   |
| 314.    | - the cash flow statement (Form 3);   | --   |
| 315.    | - the equity statement (Form 4);  | --   |
| 316.    | - notes to the annual financial statements (Form 5);  | --   |
| 317.    | - a certificate issued by the IRS confirming absence of tax arrears;  | See above row 310 re time period. Must add in the word 'current' or as 'recent'. |
| 318.    | - the breakdown of the bidder's receivables and payables as of the filing date and their dates;   | Explain how to be broken down e.g. by period, by type, by both.                  |
| 319.    | - if the bidder is non-resident, it shall provide reporting documents required in its domicile;   | Vague: the minimum reporting documents should be defined somewhere.              |
| 320.    | c) a copy of the income statement (relevant reporting documents of a private entrepreneur) – if the bidder is a natural person;   | --   |
| 321.    | - information on the previous experience and capacity to provide financial and organizational support to the implementation of an investment project;                                 | --   |
| 322.    | - documents to prove absence of disqualifying circumstances specified in clause 1.10 herein;  | --   |
| 323.    | - proposals regarding compliance with the investment tender terms and conditions;   | --   |
| 324.    | - bidder's proposals regarding the investment contribution amount;  | --   |
| 325.    | - bidder's commitment to reimburse the investment agent's expense related to the investment project development works by the method and on the terms specified in clause 4.14 herein; | --   |
| 326.    | d) Surety in accordance with the requirements to be approved by the Investment Committee; and   | --   |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>   |
|---------|---|--|
| 327.    | e) a copy of the registration fee payment slip.   | --   |
| 328.    | In accordance with the resolution of the Investment Committee, the documents included in the bidding application may be required to also include other information.   | --   |
| 329.    | 5.14. The proposal shall be compiled according to the form approved by the Investment Committee as part of the tender documentation, with the mandatory indication of the details of the person submitting the bid and in accordance with the established criteria of its evaluation to determine the winner of the investment tender, as well as the commitment to draw up an investment agreement under the conditions specified additionally by the bidder in the investment proposal. | --   |
| 330.    | 5.15. The application to participate in the investment tender, the documents (their duly certified copies) attached, and the proposal submitted by a bidder expressing the intent to participate in the investment tender, shall be signed by its authorized official, and, in its absence, documentary proof shall be attached that this legal entity has no corporate seal.   | --   |
| 331.    | The documents attached to the application shall be stitched, numbered and sealed with a stamp (if available) and certified according to established procedures.   | --   |
| 332.    | 5.16. The application, attached documents and proposals shall be submitted by the bidder who expressed his intent to participate in the investment tender in person or by authorized representatives to the working group within the term determined in the announcement of the investment tender.  | <p>At most this should be a right and not an obligation. The bidders should have a right to confidentiality.</p> <p>Should not involve the working group – segregation of duties, issue</p> <p>Should use the definition in Para. 1.4, row 17.</p> |
| 333.    | The working group shall review and register the received packages of documents for participation in the investment tender.  | <p>Review by working group contravenes best practice. Should use the terminology in 1.4 (line 19)</p>  |
| 334.    | 5.17. The proposal submitted by a bidder expressing intent to participate in the investment tender shall be viewed as his offer (proposal) to the tendering authority under the investment tender terms and the additional terms set forth by the bidder in the submitted proposal.   | --   |
| 335.    | 5.18. The proposal shall be submitted by the bidder in a double envelope. The address of the Investment Committee and the name of the investment object shall be indicated on both the external and internal envelopes. In addition to said information, the bidder's name, address and EDRPOU code shall be indicated on the internal envelope.  | <p>Good practice is to separate the financial and technical proposals and open the financial after having opened and evaluated the technical proposal as described in our report.</p>  |
| 336.    | If the proposal is comprised of more than one page, the pages of such proposal shall be stitched, numbered and sealed with a stamp (if available) and certified according to established procedures.  | --   |
| 337.    | 5.19. Within 5 (five) business days, or if additional elaboration is required, within 14 business days, but at least three days prior to the application deadline, the Working group shall analyze the applications and attached documents for compliance with legislation and investment tender documentation, also the existence of circumstances why a   | <p>This gives too much power to the working group –and defeats the point of double envelopes and opening of envelopes in public.</p>   |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>   |
|---------|--|--|
|         | bidder who has submitted the relevant documents, is not allowed to participate, in accordance with the requirements of this Regulation and Ukrainian legislation.  | If 21 days to submit a bid, 14 days for working group to review, the bidder does not have much time. Explain if working group does not get back before the deadline, what happens. The bidder needs time to make corrections. Very open to favoritism.   |
| 338.    | If the package of documents for investment tender participation was submitted by a bidder, who expressed his intent to participate in the investment tender less than 3 (three) business days prior to the deadline for the submission of said package of documents, the Working group shall analyze this application and attached documents within 5 (five) business days.  | This can result in a delay to the Investment Committee of possibly 19 days.  |
| 339.    | 5.20. Should the working group discover the non-compliance of submitted documents with the requirements of legislation and investment tender documentation, which can be corrected by the bidder, the working group shall inform the bidder of their observations in writing and via other means of communication. The bidder shall be unable to participate in the investment tender prior to the correction of the observations and his proposal is not reviewed. The correction of the observations can only be done prior to the deadline for the submission of the package of documents for participation in the investment tender. | This is to avoid disqualification on minor details but contravenes best tendering practices. Needs to have at a minimum a limit of documents that can be reviewed and strict confidentiality terms and separated from other working group duties. Via other means of communication is risky - a misunderstanding is possible if by phone or incorrect relationship between working group and bidders<br>Legal liability if the working group does not do its job would need to be defined. |
| 340.    | Should the working group discover circumstances which, according to Ukrainian legislation and this Regulation, prevent the bidder, who has submitted relevant documents, from participating in the investment tender, the working group sends a written substantiated rejection of the package of documents to the bidder and proposes that the indicated documents are returned under a Transfer and Acceptance Act.  | Conflict of segregation of duties as pertains to the working group. There should be an additional control at least such as report to the Investment Committee.   |
| 341.    | 5.21. If the application and attached documents comply with the requirements of Ukrainian legislation and this Regulation, and there are no circumstances that would prevent the bidder, who has submitted the relevant documents, from participating in the investment tender, the working group shall inform the bidder that he has gained the status of a participant in the investment tender and the number that his bid has been assigned.   | Possible conflict of segregation of duties as pertains to the working group.   |
| 342.    | 5.22. The bidder can only prepare and submit one proposal.   | --   |
| 343.    | Bidders shall have the right to enter changes to their proposals before the deadline for the submission of the package of documents, in order to improve them, by means of recalling their submitted proposals, which shall be returned under a Transfer and Acceptance Act and the submission of a new proposal or the withdrawal of their proposal   | Does not follow standard procedure at all. Need to define what can be changed – this is open to abuse if bidders can find out what   |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
|         | altogether.   | other bidders have in their draft tenders.  |
| 344.    | 5.23. Entering changes to proposals shall be prohibited once the opening of envelopes has begun.  | --  |
| 345.    | 5.24. As a rule, envelopes containing bidders' proposals will be opened at the Investment Committee meeting immediately following the expiry of the application period. The Investment Committee shall pass a resolution on the investment tender results and its winner, having opened the envelopes and analysed the proposals.   | --  |
| 346.    | 5.25. The winner of the tender shall be determined as the bidder, who proposed the best terms according to the key criteria of bids evaluation as approved by the Investment Committee. If several bidders present an identical proposal in line with the above-mentioned key criteria, the Investment Committee shall evaluate such proposals by additional criteria as approved by the Investment Committee in the tender documentation, following which the winner of the investment tender shall be determined. | Unclear why the criteria re best for the city etc. in Para. 6.2.48 of the 2007 regs have been taken out.  |
| 347.    | In exceptional cases, when the analysis and comparison of proposals according to key criteria and/or additional criteria requires a significant amount of time, having opened the bid envelopes, the Investment Committee may instruct the Working group to analyze the proposals submitted, prepare a comparison chart and propose its opinion regarding the investment tender winner to be considered at the next Investment Committee meeting.   | Possible conflict of interest of the working group. They should not be involved in making suggestions and helping bidders – these tasks must be segregated. |
| 348.    | 5.26. If there was a single bidder, and his proposals meet the investment tender terms, such bidder shall be the winner of the investment tender and an investment agreement shall be signed with him, having agreed the terms and conditions of the investment agreement, in line with the procedure specified herein.   | Need to ensure that there are robust minimum criteria set; otherwise the bidders could form a cartel and apportion the projects.                            |
| 349.    | 5.27. The resolution of the Investment Committee regarding the winner of the investment tender shall be approved by an order of the executive body of the Kyiv City Council (Kyiv City State Administration) at the request of the tendering authority.   | --  |
| 350.    | 5.28. The Investment Committee may void an investment tender in the following instances:  | Needs to be included in the protocol.   |
| 351.    | the working group has not registered a single bidder in the investment tender;  | --  |
| 352.    | the Investment Committee has received substantiated filing from competent authorities prior to the opening of the envelopes containing proposals and determined that the continuation of the investment tender is inexpedient;  | --  |
| 353.    | none of the proposals comply with the investment tender terms;  | Needs to be specifically and clearly explained and outlined in the protocol   |
| 354.    | on the other grounds specified by the Investment Committee and included in the investment tender terms.   | Clarify that the termination should only be based on legislation or the investment tender terms.  |
| 355.    | If the investment tender is declared as such that has not taken place, the Investment Committee can decide that the investment tender can be held for a second time.  | --  |
| 356.    | If the Investment Committee declares the investment tender as such that has not taken place, on the request of a bidder who has submitted a package of documents for participation in the investment tender, the working group shall have the right to return such documents, with the exception of the bidding application.  | Obligation would be better than right.  |

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
| 357.    | The return of documents shall be confirmed by a Transfer and Acceptance Act.  | --  |
| 358.    | 5.28. The Investment Committee shall register the results of the investment tender in the form of the Protocol, indicating the following:   | -- (Numbering of the Ukrainian version, there are two 5.28's)   |
| 359.    | a) name of the investment object;   | --  |
| 360.    | b) Investment Committee members present;  | --  |
| 361.    | c) information on bidders;  | Minimum details need to be outlined somewhere.  |
| 362.    | d) bidders' proposals;  | Minimum details need to be outlined somewhere   |
| 363.    | e) proposals of the attending Investment Committee members as regards the determination of the winner;  | Minutes/protocol should record objections/ significant comments as well.  |
| 364.    | f) voting results based on the evaluation of proposals;   | --  |
| 365.    | g) decision on the investment tender winner.  | --  |
| 366.    | 5.29. The tendering authority shall inform the winner and other bidders of the results of the investment tender within five days of the issuance of the order by the executive body of the Kyiv City Council (Kyiv City State Administration) on the approval of the Investment Committee's decision regarding the winner of the investment tender.   | Unclear why 5 days to announce a simple decision. Should define if calendar or business days.   |
| 367.    | After the expiry of the validity period of the surety, on the request of a bidder other than the winner of the investment tender, the tendering authority shall have the right to return said surety, which was provided as part of the proposal. The actual reimbursement shall be confirmed by a Transfer and Acceptance Act.   | Unclear why 'shall have the right' and not obligation. Should be an obligation. Unclear why not returned to all the non-winning bidders.            |
| 368.    | <b>VI. Drawing up Investment Agreements and their Execution</b>   | --  |
| 369.    | 6.1. Within ten (10) business days of the day of the order of the executive body of the Kyiv City Council (Kyiv City State Administration) regarding the winner of the investment tender, the tendering authority shall publish the results of the investment tender in the <u>printed</u> mass media, in accordance with clause 5.4 herein.  | 10 business days seems long for this task. It should be required to be on the website and perhaps in government paper. Not only printed mass media. |
| 370.    | 6.2. Within five (5) business days of the release of the order of the executive body of the Kyiv City Council (Kyiv City State Administration) on the approval of the Investment Committee's decision regarding the tender winner, the tendering authority, together with the project implementation commissioner and the investment agent shall elaborate a draft investment agreement taking into account the proposals made by the winner of the investment tender, the information on the parties to this agreement, and other issues that were not determined in the draft investment agreement. | Circular – should explain in the earlier or original draft agreement.   |
| 371.    | Within ten (10) business days of release of the order of the executive body of the Kyiv City Council (Kyiv City State Administration) on the approval of the Investment Committee's decision regarding the tender winner, the tendering authority shall send an invitation to the winner of the investment tender to sign the investment agreement and furnishes him with a draft investment agreement, which takes into account the winner's proposals.  | --  |
| 372.    | 6.3. If, the investment agreement is not drawn up within 15 (fifteen) business days of the invitation sent to the address indicated in paragraph 2 of clause 6.2 herein, because the winner refuses to sign said investment agreement, proposes unacceptable conditions, fails to provide the surety as set forth in the investment agreement on the  | The surety has already been given at the time of bidding according to the definition (row 13) so unclear why it would be an                         |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>  |
|---------|---|---|
|         | investment tender terms, the tendering authority shall propose that the Investment Committee cancel its resolution on the winner and award the contract to another bidder in conformity with clause 5.25 herein. If the Investment Committee decides to revoke the winner resolution (and selects a new winner), the tendering authority shall prepare and submit a draft order of the executive body of the Kyiv City Council (Kyiv City State Administration) on the approval of this resolution of the Investment Committee within five (5) calendar days of the resolution. | issue here. Perhaps definition should be changed if it intended that the surety is sometimes only required from the bidders.  |
| 373.    | 6.4. The Director of the Department of Economy and Investments of the executive body of the Kyiv City Council (Kyiv City State Administration) or a person authorised by him, shall sign the investment agreement on behalf of the tendering authority.   | --  |
| 374.    | 6.5. The investment agreement shall be deemed concluded on the date of the signing of the text of the investment agreement by the parties and its registration at the Department of Economy and Investments of the executive body of the Kyiv City Council (Kyiv City State Administration).  | --  |
| 375.    | 6.6. Control over compliance with the investment agreement terms shall lie with the parties within limits determined by this clause.  | See rows 121 and 376.   |
| 376.    | The tendering authority shall monitor the execution of investment agreement terms within the limits of its legal responsibilities.  | --  |
| 377.    | The investment project implementation commissioner shall oversee the execution of investment agreement terms, including compliance with the functional purpose-oriented use of property, meeting the deadlines established in the investment agreement, compliance with the requirements of project documentation, the quality of works and services, etc.  | --  |
| 378.    | 6.7. Parties to the investment agreement, other than the tendering authority, may be replaced, provided the following conditions are met:   | Need a line that the new investor needs to meet the required criteria from the bid otherwise this is open to abuse.   |
| 379.    | other parties to the investment agreement do not object to the replacement of a party thereto;  | --  |
| 380.    | the new party has agreed to enter into the investment agreement under the terms determined therein, which were agreed with the previous party;  | --  |
| 381.    | the Investment Committee agreed the replacement of the party to the investment agreement;   | --  |
| 382.    | the Investment Committee's resolution on agreeing the replacement of the party is approved by order of the executive body of the Kyiv City Council (Kyiv City State Administration).  | --  |
| 383.    | In the case of the initiation of the replacement of an investor, for Investment Committee to approve the replacement by its resolution, the new investor shall submit documentation, including legal and financial documents, which confirms his ability to perform the obligations of an investor in accordance with the investment agreement.   | Should specify that the replacement needs to submit the same as defined in Para. 5.13 and relevant parts of 5.11 and 5.12. Need to identify whom or which party to submit to. |
| 384.    | 6.8. If all the circumstances specified by clause 6.7 herein are in place, the parties shall enter relevant changes to the investment agreement.  | Should state that a new investment agreement must be signed. Clarify about new surety as well as this is important.   |
| 385.    | 6.9. The investment amount indicated in the investment agreement can  | This part needs to have   |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         | increase/decrease, depending on the changes in actual expenses for the preparation of project documentation, urban planning calculations and/or the execution of works, provided for by the relevant investment agreement.   | more details to avoid abuse. Need mechanisms for requested changes and publicity of these changes.  |
| 386.    | Should the investment amount indicated in the investment agreement be decreased, the tendering authority and investment agent shall pay no reimbursements to the winner of the investment tender.  | Need controls on decreases in investment amounts after the fact to ensure the quality etc. of the benefit to the city is not reduced.   |
| 387.    | 6.10. The investment agreement, unless otherwise provided for by the investment tender terms, shall provide for the investor's obligation to compensate any expenses incurred by the investment project implementation commissioner related to the implementation of the investment project, including expenses for the preparation and maintenance of a land plot, expenses for the development and expert opinion of project documentation, expenses related to the construction of the investment object and its putting into operation, as well as other expenses provided for by legislation and the investment agreement.  | --  |
| 388.    | 6.11. The investment agreement or any agreement concluded between the investor and a person conducting the construction functions of the commissioner during the implementation of the investment project according to legislation, can provide for terms for the transfer of the rights and obligations of the construction commissioner to the investor.   | This appears to be wrong: the duties of 'Project Commissioner' if that is different from the 'Investment Project Implementation Commissioner' should never be handed over to the investor unless it is for their own property.  |
| 389.    | If the functions of a commissioning a construction are conducted independently by such person, the investor shall compensate to this person all expenses incurred in connection with the execution of the rights and obligations of the construction commissioner.   | 'Such person' is unclear. Construction commissioning is not defined. Also not clear if this the same as in paragraph 7.1.1.   |
| 390.    | 6.12. If the technical and economic estimates of the investment object determined by the investor are greater than the indicators in the investment tender terms, the investor, prior to the beginning of works, shall apply to the tendering authority with a request for the latter to consider changing the area to which the technical and economic indicators of the investment object apply at the Investment Committee meeting. On the basis of the Investment Committee's resolution, the parties to the investment agreement shall agree in writing to the amount and terms for the investor to pay an additional investment contribution by means of concluding an additional agreement as a supplement to the investment agreement. | Should follow best tendering practices as this is open to abuse since this could mean an increase in land. I assume these are parameters like the size of the land plot, and the design details<br>Should clarify what is the effect on the fee paid to KIA (the 1% fee of estimated expenses). |
| 391.    | 6.13. Should the expenses for the implementation of an investment project increase, the investor shall provide additional financing for all expenses related to this, according to the procedures specified in the investment agreement, and approved by the method specified in the project documentation.  | This should be monitored to ensure that it is not to reduce the 1% fee.   |
| 392.    | 6.14. The tendering authority shall have the right to terminate an investment agreement with the investor according to established procedures, if the investor violates investment agreement terms, specifically, does not execute or unduly executes his investment obligations.  | --  |

REVIEW OF THE DRAFT REGULATIONS, JUNE 2015

| Row No. | Paragraph <sup>2</sup>  | Consultant's Comments <sup>3</sup>      |
|---------|---|---|
| 393.    | If any violations of investment agreement terms are discovered, the investment project implementation commissioner shall notify the tendering authority about the fact. The investment project implementation commissioner and/or tendering authority have other rights, provided for in the investment agreement, including the applications of penalties against the investor.  | --                                      |
| 394.    | 6.15. If the investment agreement with the investor is terminated, according to this Regulation, the commission shall resolve the issue of the attraction of a new investor by means of repeating, or conducting a new investment tender, or, if possible, the determination of another person from among the other bidders as the winner of the investment tender, in accordance with 5.25 herein, as well as the terms and amount of compensation to the previous investor, as incurred in the implementation of the investment project. The investor's expenses incurred in the implementation of the investment project shall be conducted by reimbursed by the new investor in line with investment agreement terms. | ---                                     |
| 395.    | 6.16. Permission to knock down non-residential buildings, structures, etc. that are part of the communal property of the territorial community of the city of Kyiv, should such necessity emerge in the course of the implementation of the investment project, shall be granted in a separate resolution by the Kyiv City Council.   | --                                      |
| 396.    | 6.17. Title to investment objects or portions thereof created in the process of the implementation of the investment project during the construction or reconstruction of investment objects can be transferred to the investor in accordance with the terms of the investment tender and the investment agreement.   | --                                      |
| 397.    | The transfer of property ownership rights of investment objects that are owned by the territorial community of the city of Kyiv (municipally owned) shall be conducted in accordance with the legislation of Ukraine.   | --                                      |
| 398.    | 6.18. The formalization of ownership of newly created investment objects or portions thereof, if constructed or reconstructed at the investor's expense under the terms of the investment tender and investment agreement shall be conducted by him independently, after the completed buildings have been put into operation in the established order.   | --                                      |
| 399.    | 6.19. Investment objects or portions thereof whose construction, reconstruction, rehabilitation, major repairs, refurbishments etc. was done at the investors' expense and no ownership transfer to investors is envisaged by the terms of the investment tender and investment agreement, shall be registered (title assigned) by the prescribed method as property owned by the territorial community of the city of Kyiv.  | --                                      |
| 400.    | <b>VII. The Resolution of Land Use Issues</b>   | --                                      |
| 401.    | 7.1. For the purpose of attracting investments to the city of Kyiv's economy in accordance with this Regulation, the acquisition of the right to land can be resolved by one of the following means:  | --                                      |
| 402.    | 7.1.1 providing viable investment land plots to the construction commissioner, if such is the Kyiv District State Administration, a municipal enterprise, entity or organisation of the territorial community of the city of Kyiv or a business entity, the authorized capital of which includes municipal equity interest (shares, stakes) in excess of 60%.   | Construction commission is not defined. |
| 403.    | 7.1.2 sale of viable investment land plots or leasing them to the investors – winners of an investment tender, without conducting land auctions by the method specified in the Land Code of Ukraine, in cases of investment tenders for construction of objects on land plots or other  | --                                      |

| Row No. | Paragraph <sup>2</sup>   | Consultant's Comments <sup>3</sup>  |
|---------|--|---|
|         | use of land plots, which can be sold or leased without conducting land auctions for construction of objects or for other use in line with article 134(2) of the Land Code of Ukraine (hereinafter – the allocation of a land plot to an investor).   |   |
| 404.    | 7.2. A land plot or a list of land plots, which shall be allocated to an investor – the winner of an investment tender shall be compiled by the tendering authority, taking into account the investment objects determined under established procedures, according to clause 4.4 herein and in cases specified in article 134(2) of the Land Code of Ukraine, and shall then be forwarded to the Department of Land Resources of the executive body of the Kyiv City Council (Kyiv City State Administration) to be taken into account when examining applications and other materials from other legal entities and private individuals regarding the legalization of land use projects on these land plots.          | This list should be made public. As it is, a corrupt city civil servant could provide the list to a developer who initiates a tender.   |
| 405.    | 7.3. After the approval of the Investment Committee's resolution on the winner of an investment tender by order of the executive body of the Kyiv City Council (Kyiv City State Administration), the First Deputy Head of the Kyiv City State Administration or the Deputy Head of the Kyiv City State Administration, who is the Investment Committee Chairman, shall propose that the Kyiv City Council take into account the results of the investment tender, for the purpose of resolving the issue of granting its winner the land plot in accordance with sub-clause 7.1.2 of this Regulation.  | --  |
| 406.    | 7.4. Land plots, whose ownership in legalized in accordance with sub-clause 7.1.1 herein, shall not be allocated to investor - winner of an investment tender for use or ownership until the investment agreement implementation has been completed.   | Preferable to require confirmation that it has met the specifications.  |
| 407.    | 7.5. After the identification of investment objects by the method specified in clause 4.4 herein and of the <b>construction commissioner</b> under sub-clause 7.1.1 herein, the latter shall submit a request to the Kyiv City Council and the executive body of the Kyiv City Council (Kyiv City State Administration) to be granted permission for development of relevant land use documentation in the established order, in cases and by the method established in the Land Code of Ukraine and by the resolutions of the Kyiv City Council or the orders of the executive body of the Kyiv City Council (Kyiv City State Administration), which shall be approved (issued) within the scope of their competence. | In Para. 4.4, row 178, DEI should make the request to KMDA.<br>Should align with Para. 4.4. Para. 7.1.1 does not explain how the body commissioning the construction is chosen. |
| 408.    | 7.6. Having obtained permission to develop the relevant documentation for land use regarding the allocation of a land plot, the construction commissioner indicated in sub-clause 7.1.1 herein shall inform the tendering authority of this fact, for the purpose of it being taken into account during the investment tender and the when drawing up an investment agreement.   | Should add the permission is from paragraph 7.5 if I understood correctly.  |
| 409.    | 7.7. The Investment Committee may determine as part of the investment tender terms and as a mandatory requirement for the investor to implement the investment agreement in full, that it is the investor's obligation to legalize the ownership right or lease of the relevant land plot in conformity with the investment tender terms approved and with the legislation of Ukraine.   | --  |

# ANNEX IV. INDIVIDUALS INTERVIEWED

The CARANA team interviewed approximately 50 individuals as part of the consultancy, including:

## **KIA**

1. Oleg Mistuque, KIA Chief Executive Officer
2. Svitlana Tereshchenko, Deputy, Finance
3. Vitaliy Boyko, Head of Real Estate Projects
4. Bogdan Chorniy, Deputy, Real Estate Projects
5. Alisa Berezutska, International Projects Specialist
6. William Schreiber, International Projects Associate
7. Maksym Barylo, Investor Relations
8. Ivan Zievakov, Head of Legal
9. Viacheslav Gasiunas, Deputy Director, Legal
10. Oksana Povoroznk, Legal Department
11. Yuriy Nazarov, IT Department, KIA; Advisor to Mayor
12. Bohdan Kushniarov, Assistant to the CEO
13. Olga Zherlitsyna Chief Accountant
14. Svitlana Prynada, Advisor
15. Evelina Trinchuk, KIA Project Manager

## **KMDA**

16. Pavlo Deminsky, Deputy Mayor and Advisor to the Mayor
17. Robert Koenig, Advisor to the Mayor
18. Gennadiy Plis, Head of KMDA's Department of Internal Financial Control and Audit
19. Oleg Svitlychnyi, Deputy Director, KMDA's Department for Economy and Investments
20. Serhiy Chornutskiy, Head of the Central Harmonisation Unit (oversees internal audit in the national government and KMDA)

## **Donors and Donor Projects**

21. Daria Kochubinskaya, EBRD Private Banker, Municipal and Environmental Infrastructure
22. Tamara Salukhia, World Bank
23. Victoria Strakhova, EBRD Financial Sector Reform
24. Mickey Mullay, Chief of Party, USAID PPP Project
25. Irina Davydova, PPP and Infrastructure Expert, USAID PPP Project
26. Valeriy Dobrovolski, Economic Growth Sector Lead, Expert Deployment for Governance and Economic Growth (EDGE Project, Canada), Former Member of USAID's PPP Project)
27. David Vaughn, Chief of Party, USAID FAIR Justice Project
28. Anna Sukhova, Judicial Accountability Specialist, USAID FAIR Justice Project
29. Roman Falfushynskyi, Legal Specialist, USAID FAIR Justice Project
30. Yuliya Vitka, Head of Legal, USAID FINREP-II Project
31. Gleb Kryvenko, Anti-Corruption Specialist, USAID FINREP-II Project

32. Jan van Tuinen, Program Coordinator, Netherlands Technical Assistance Program to the Ministry of Finance of Ukraine
33. Ruslana Rudnitska, Deputy Program Coordinator, Netherlands Technical Assistance Program to the Ministry of Finance of Ukraine
34. Ben Hill, Financial Reporting Reform, USAID FINREP-II Project

### **Private Sector**

35. Svetlana Mikhaylovska, Deputy Director for Business Development, European Business Association
36. Inna Buriak, Committee Manager, European Business Association
37. Nataliya Gotvianska, Policy Officer, American Chamber of Commerce
38. Oleksey Felev, Gide Layzette, Novel, Real Estate Working Group, American Chamber of Commerce. (IS THERE A REASON THAT THE TWO PEOPLE ARE PUT TOGETHER. WHY THE WORD NOVEL?)
39. Oleksii Kutsenko, Manager, Consulting Department, Deloitte
40. Tala Stetsenko, Partner, Talent Advisors (Part of the Deloitte Consortium advising KIA)
41. Giorgi Vashadze, E-government Solutions Consultant, and Member, Parliament of Georgia
42. Jeff Howley, CEO Mosquito Internet and Investor in KIA Investment Project
43. Svetlana Winbourne, Anti-Corruption Specialist, Management Systems International

### **Civil Society Organizations**

44. Victor Nestulia, Senior Analyst, Transparency International
45. Olesya Arkhypska, Governance Expert, Transparency International
46. Oksana Belurko, Reanimation Packages of Reform
47. Halyna Yanchenko, Anti-Corruption Headquarters
48. Olena Shcherban, Anti-Corruption Action Centre (AntAC)
49. Prof Mykola Khavronyuk, Research Director, Centre for Political and Legal Reforms
50. Mykhailo Serebriakov, Lawyer, volunteer aide to a city council deputy and anti-corruption activist

# ANNEX V. ESTIMATED ANNUAL COSTS FOR PROPOSED OVERSIGHT UNIT

The table below estimates the annual costs of the oversight function. The 'Government Rates' column is calculated using standard government salaries, supplied by KIA's chief accountant and the head of the Central Harmonization Unit, the unit that oversees most government internal audit. Market rates would attract and re-train top quality staff. These rates are intended to reflect private sector salaries and should be adjusted for changes in US dollar exchange rate.

| Costs  | Government Rates (UAH) | Market Rates (UAH) | Comments and Assumptions  |
|--|------------------------|--------------------|---|
| <b>Oversight Unit</b>                                  |                        |                    |   |
| Salaries including bonuses and benefits                |                        |                    |   |
| <b>Executive Director</b>                              | 180,000                | 396,000            | For government salaries, bonus for good results at 100% of basic wage assumed for three quarters of the year.               |
| <b>Senior Auditor</b>                                  | 144,000                | 264,000            |   |
| <b>Oversight Unit Staff: One Auditor, One Engineer</b> | 162,000                | 240,000            |   |
| <b>Administrative Support, one employee</b>            | 81,000                 | 81,000             | Government salary is used for both scenarios for the administrative support.  |
| <b>Social Costs Oversight Unit (37%)</b>               | 143,190                | 216,450            |   |
| Total salaries and benefits                            | <b>710,190</b>         | <b>1,197,450</b>   |   |
| Running Costs of Office                                | 65,000                 | 65,000             | As recommended in discussions at KIA excludes rental of premises. Other costs were kindly provided by KIA Chief Accountant. |
| Total Oversight Unit                                   | <b>775,190</b>         | <b>1,262,450</b>   |   |
| <b>Oversight/Advisory Board</b>                        |                        |                    |   |
| Travel, Transportation and Per Diem                    | 22,000                 | 220,000            | Assume two nonresident notables, four trips per year  |
| Meeting Costs  | 25,000                 | 25,000             | Assumes no rental of meeting room needed  |
| Other Direct Costs                                     | 10,000                 | 10,000             |   |
| Total Oversight/Advisory Board                         | <b>57,000</b>          | <b>255,000</b>     | Assume that all members are pro bono  |
| Total Estimated Running Costs Calculated               | <b>832,190</b>         | <b>1,517,450</b>   |   |
| Rounded Estimated Running Cost                         | <b>850,000</b>         | <b>1,525,000</b>   |   |

# ANNEX VI. KIA INVESTMENT OVERSIGHT CONSULTANCY PRESENTATION: MAJOR FINDINGS AND RECOMMENDATIONS

[UNATTACHED]