

CABINET OF MINISTERS OF UKRAINE

RESOLUTION

as of 28 July 2021, No. 819

Kyiv

**On Approval of Procedure
and Methodology for Conducting Evaluation of an Investment Project with Significant
Investments**

*{With changes made in accordance with the Resolutions of the Cabinet of Ministers
as of 13 December 2021, No. 1311
as of 9 August 2022, No. 881}*

In accordance with paragraph 1 of Article 7 of the Law of Ukraine “On State Support for Investment Projects for Significant Investments in Ukraine” the Cabinet of Ministers of Ukraine **decrees:**

1. To approve Procedure and Methodology for Conducting Evaluation of an Investment Project with Significant Investments which is attached.

2. The Ministry of Economy shall prepare and submit to the Antimonopoly Committee a notification on the new state aid program “State support for investment projects with significant investments in Ukraine” in accordance with the requirements of the Law of Ukraine “On State Aid to Business Entities” within three months.

3. The Ministry of Digital Transformation and the Ministry of Economy shall submit to the Cabinet of Ministers of Ukraine proposals to ensure the possibility of submitting applications and other documents provided for in paragraph 1 of Article 7 of the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine” in electronic form using the Unified State Web Portal of Electronic Services within six months.

Prime Minister of Ukraine

D. SHMYHAL

APPROVED
by the resolution of the Cabinet of Ministers of Ukraine
as of 28 July 2021, No. 819

PROCEDURE
and Methodology for Conducting Evaluation of an Investment Project with Significant Investments

General issues

1. This Procedure defines the procedure and methodology for conducting evaluation of an investment project with significant investments (hereinafter – the evaluation).

2. In this Procedure, the terms are used in the meaning given in the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine” (hereinafter – the Law).

3. The evaluation is carried out by the Ministry of Economy in two stages within sixty calendar days from the date of receipt of the documents provided for in paragraph 1 of Article 7 of the Law, namely:

an application prepared in the form according to annex 1;

a draft special investment agreement;

feasibility study of an investment project with significant investments (hereinafter – feasibility study), developed in accordance with the requirements for feasibility study of an investment project with significant investments, approved by the Cabinet of Ministers of Ukraine as of 19 May 2021, No. 515 (Official Bulletin of Ukraine, 2021, No. 43, p. 2626);

documents confirming an applicant's compliance with the requirements to an applicant's financial capacity to implement an investment project with significant investments, approved by the Cabinet of Ministers of Ukraine as of 23 June 2021, No. 648 (Official Bulletin of Ukraine, 2021, No. 52, p. 3211);

documents confirming the absence of restrictions specified in paragraph 4 of Article 7 of the Law, submitted by an applicant, in view of the requirements provided for in paragraph 4 of this Procedure.

3¹. The evaluation of an investment project financed at the expense of funds borrowed from the International Finance Corporation, European Bank for Reconstruction and Development, European Investment Bank, other international financial institutions Ukraine is a member-state to, and governmental financial organizations established by the government (governments) of a foreign state (foreign states) in accordance with a confirmation letter on signing a loan agreement is carried out by the Ministry of Economy within 45 calendar days.

{The paragraph 3¹ is added to this Procedure in accordance with the Resolution of the Cabinet of Ministers as of 9 August 2022, No. 881}

4. To confirm the absence of restrictions specified in subparagraphs 10 and 12 of paragraph 4 of Article 7 of the Law, an applicant shall submit the following documents:

Unofficial Translation

1) a certificate or other document which, in accordance with the legislation of the state where an applicant is registered, confirms the absence of restrictions specified in subparagraph 10 of paragraph 4 of Article 7 of the Law (for non-residents);

2) a certificate or other document which, in accordance with the legislation of the state where an applicant is registered, confirms the absence of restrictions specified in subparagraph 12 of paragraph 4 of Article 7 of the Law (for non-residents).

To confirm the absence of restrictions specified in paragraph 4 of Article 7 of the Law, an applicant's authorized person submits a signed letter in paper or electronic form (in compliance with the legislation on electronic documents and electronic document flow), which certifies and guarantees that an applicant meets all requirements specified in paragraph 4 of Article 7 of the Law.

If an applicant is represented by several legal entities, the documents provided for in subparagraphs 1-2 of this paragraph shall be submitted by each of such legal entities.

The first stage of evaluation

5. The Ministry of Economy within ten working days from the date of receipt of the documents specified in paragraphs 3 and 4 of this Procedure, checks the compliance of an applicant, investment project with significant investments and submitted documents with the requirements of the legislation (in the case specified in paragraph 3-1 of this Procedure – within five working days).

{Paragraph 5 as amended by the Resolution of the Cabinet of Ministers as of 9 August 2022, No. 881}

6. When checking the compliance of an applicant, investment project with significant investments and submitted documents with the requirements of the legislation the Ministry of Economy does not require documentary evidence of public information released in the form of open data in accordance with the Law of Ukraine “On Access to Public Information” and/or contained in open unified state registers, access to which is free.

7. When checking the compliance of submitted documents with the requirements of the legislation, the Ministry of Economy may recognize admissible formal (insignificant) errors in the design of documents and information submitted with them, which do not affect their content, including technical errors and omissions.

8. If the results of the revision specified in paragraph 5 of this Procedure reveal non-compliance of an applicant, investment project with significant investments and submitted documents with the requirements of the legislation, the evaluation shall be terminated by the Ministry of Economy of which an applicant is notified.

The second stage of evaluation

9. If the results of the revision specified in paragraph 5 of this Procedure do not reveal non-compliance of an applicant, investment project with significant investments and submitted documents with the requirements of the legislation, the Ministry of Economy shall send the documents specified in paragraphs 3 and 4 of this Procedure in electronic form:

to the Ministry of Finance – to analyze an investment project with significant investments and a draft special investment agreement in terms of forms and total amount of state support offered for the

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implementation of an investment project with significant investments, and submit appropriate proposals;

to the Ministry of Environment – to analyze environmental consequences and risks of an investment project with significant investments, a draft special investment agreement and submit appropriate proposals;

to the Ministry of Justice – to analyze a draft special investment agreement, the exemplary form of which is determined by the regulatory act of the Ministry of Economy, prepare, if necessary, comments on its completion and submit appropriate proposals;

{Subparagraph 4 of paragraph 9 as amended by the Resolution of the Cabinet of Ministers as of 9 August 2022, No. 881}

to the Antimonopoly Committee – to analyze risks of implementing an investment project with significant investments, a draft special investment agreement, forms and total amount of state support offered for implementation of an investment project with significant investments, and submit appropriate proposals;

a central executive body that ensures the formation of state policy in the field in which implementation of an investment project with significant investments is planned – to submit appropriate proposals, including regarding a draft special investment agreement;

to a local authority (in case of granting state support by such authority) – for analysis of the risks of implementing an investment project with significant investments, forms and total amount of state support offered for implementation of an investment project with significant investments, a draft special investment agreement, preparation of proposals for its completion (if needed) and submission of appropriate proposals.

10. The Ministry of Finance, the Ministry of Environment, the Ministry of Justice, the Antimonopoly Committee, a central executive body that ensures the formation of state policy in the field in which implementation of an investment project with significant investments is planned, a local authority within twenty calendar days from the date of receipt of documents defined in paragraph 8 of this Procedure analyze them and send the results of the analysis and the relevant proposals to the Ministry of Economy or indicate the absence of the relevant proposals (in the case specified in paragraph 3-1 of this Procedure – within fifteen working days).

{Paragraph 10 as amended by the Resolution of the Cabinet of Ministers as of 9 August 2022, No. 881}

11. In order to obtain information on issues within the competence of other central and local executive bodies, other state authorities, the Ministry of Economy may involve them in the evaluation and ask them for relevant proposals and clarifications, as well as if needed to obtain additional information and/or documents necessary for the evaluation, the Ministry of Economy may address relevant requests to the authorized institution, state bodies, local authorities, financial institutions, legal entities and individuals. The answer to such requests is provided within a short time, which cannot exceed ten working days (in the case specified in paragraph 3-1 of this Procedure – within five working days).

{Paragraph 11 as amended by the Resolution of the Cabinet of Ministers as of 9 August 2022, No. 881}

Unofficial Translation

12. In case of non-receipt by the Ministry of Economy of information on the results of analysis and proposals or information on their absence within the period provided for in paragraphs 10 and 11 of this Procedure, the documents specified in paragraphs 3 and 4 of this Procedure shall be deemed as considered and analyzed by relevant bodies without comments and suggestions.

13. The Ministry of Economy in view of the available proposals of the Ministry of Finance, the Ministry of Environment, the Ministry of Justice, the Antimonopoly Committee, a central executive body that ensures the formation of state policy in the field in which implementation of an investment project with significant investments is planned, local authority shall summarize the results of the analysis of an investment project with significant investments and a draft special investment agreement regarding:

1) the analysis of economic, financial, social indicators of an investment project with significant investments, in particular, the Ministry of Economy verifies:

the results of the cost-benefit analysis in view of the guidelines for cost-benefit analysis set out in Annex 2;

demand analysis, which includes information on a description of demand forecast scenarios and the corresponding assumptions for each scenario, as well as a description and justification of such assumptions for each scenario;

calculation of the amount of significant investments in investment objects;

calculation of the indicator of economic net present value (ENPV) presented in the feasibility study, which takes into account, in particular, the total amount of state support as economic costs and can not be less than 0 (zero);

calculation of economic internal rate of return (EIRR) presented in the feasibility study, which takes into account, in particular, the total amount of state support as economic costs and can not be less than the discount rate used when calculating economic net present value (ENPV), calculated in view of the guidelines for cost-benefit analysis;

2) analysis of environmental consequences of implementation of an investment project with significant investments;

3) risk analysis of an investment project with significant investments, in particular, analysis of the results of quantitative and qualitative risk assessment, assessment of the probability of risks and possible consequences for an investment project with significant investments. Significant economic, financial, social and/or environmental risks of a high probability of occurrence and significant negative impact on an investment project with significant investments or the environment, in the absence of an effective mechanism to reduce impact of such risks is the ground for conclusion on the inexpediency of implementing an investment project with significant investments and refusal to enter into a special investment agreement;

4) analysis of the forms and total amount of state support offered for implementation of an investment project with significant investments, in particular, the Ministry of Economy verifies:

the total amount of state support and approaches to its calculation in view of the requirements of the methodology for calculating the amount of state support for investment projects with significant investments, approved by the Cabinet of Ministers of Ukraine as of 7 July 2021, No. 714. While analyzing the total amount of state support the Ministry of Economy considers economic indicators

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of an investment project implementation with significant investments, in particular indicators of economic net present value (ENPV), economic internal rate of return (EIRR). If economic net present value (ENPV) is less than 0 (zero) and/or economic internal rate of return (EIRR) is less than the discount rate used to calculate economic net present value (ENPV), total state support is reduced to the level, which will ensure compliance of such indicators with the requirements specified in this paragraph, which is stated in the conclusion on the inexpediency of implementing an investment project with significant investments and refusal to enter into a special investment agreement;

compliance of the forms of state support with the provisions of Article 3 and paragraph 3 of Section VII “Final and Transitional Provisions” of the Law;

5) analysis of a draft special investment agreement and preparation of comments on its completion, if needed, in particular, the Ministry of Economy verifies compliance of the provisions of a draft special investment agreement with:

provisions of the feasibility study on the amount and approximate schedule of investments, number of new jobs created, average salary of employees;

legal requirements.

14. Based on the results of the second stage of the evaluation the Ministry of Economy prepares one of the following conclusions in the form specified in Annex 3:

conclusion on the expediency of implementing an investment project with significant investments and concluding a special investment agreement;

conclusion on the inexpediency of implementing an investment project with significant investments and refusal to enter into a special investment agreement.

In case the Ministry of Economy prepares the conclusion on the expediency of implementing an investment project with significant investments feasibility study of which provides for a necessity of carrying out an environmental impact assessment and/or development of documents of the state planning and their strategic ecological assessment, such a conclusion shall state that implementation of an investment project with significant investments is possible upon obtaining a positive conclusion on the environmental impact assessment and conducting strategic environmental assessment.

15. Adopting a conclusion on the inexpediency of the investment project with significant investments and refusal to enter into a special investment agreement shall be based on the following grounds:

submission by an applicant of inaccurate information in an application, including if inaccuracy is established on the basis of responses to requests in accordance with paragraphs 10 and 11 of this Procedure;

non-compliance of an applicant and/or investment project with significant investments with the requirements provided by the Law;

amount of state support offered in an investment project with significant investments exceeds the maximum allowable amount of state support provided for in Article 4 of the Law;

Unofficial Translation

identification during the evaluation of economic, financial, social and/or environmental risks and/or negative consequences that may result from its implementation (in particular, a negative ENPV indicator).

16. If needed to finalize a draft special investment agreement, the Ministry of Economy together with the conclusion on the expediency of implementing an investment project with significant investments and entering into a special investment agreement shall send an applicant comments on a draft agreement with a proposal to finalize it.

The conclusion shall be sent to an applicant and the authorized institution within five working days from the date of its signing.

Annex 1

to the Procedure

*{As amended by the Resolution of the Cabinet of Ministers
as of 9 August 2022, No. 881}*

The Ministry of Economy of Ukraine

APPLICATION

Date _____

(name (legal name) of an applicant)

confirms its authority to submit this application;

determines the right of the Ministry of Economy to request additional information that is reasonably required for consideration of the application; to stop the evaluation of an investment project with significant investments (hereinafter – the project), if the evaluation revealed non-compliance of an applicant, project and submitted documents with the requirements established by law; to make the conclusion on inexpediency of implementing an investment project with significant investments and refusal to enter into a special investment agreement on the grounds specified by the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine” (hereinafter – the Law);

determines exclusive application of the legislation of Ukraine to the procedure of application and project evaluation;

declares and guarantees that on the date of submission of this application all information contained in this application, including attached documents, is reliable and accurate in all respects and will remain so during the project evaluation period and until the conclusion of a special investment agreement (in case of the conclusion on expediency of implementing an investment project with significant investments and concluding a special investment agreement);

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agrees to cooperate while preparing the project, as well as jointly implement the project on the terms set forth in the documents attached to this application, and fulfill the terms of a special investment agreement if the Ministry of Economy prepares a conclusion on the expediency of implementing an investment project with significant investments and concluding a special investment agreement. *

The following is attached to this application:

power of attorney (if applicable) or other documents for an applicant's representation, on __ pages;

information about an applicant, containing the name of an applicant's legal entity, type (corporation, company, etc.), company registration data (registration number, date, place, registration authority, etc.), country of origin, legal address, head office address, official persons (full name, identity card, position), telephone number, fax number, e-mail address, main fields of economic activity, on __ pages;

documents confirming an applicant's compliance with the requirements for financial capacity for the project implementation, on __ pages;

an applicant's confirmation letter (one or more, depending on number of legal entities applying) and other documents confirming an applicant's compliance with the requirements specified in paragraph 4 of Article 7 of the Law of Ukraine "In State Support for Investment Projects with Significant Investments in Ukraine", submitted by an applicant in view of the provisions of paragraph 4 of the Procedure and methodology and methodology for conducting evaluation of an investment project with significant investments, on __ pages;

feasibility study of the project, developed in view of the requirements for feasibility study of an investment project with significant investments, on __ pages;

a draft special investment agreement, on __ pages.

(name (legal name) of an applicant)

appoints (surname, name) as its main authorized representative to receive notifications on issues related to the project evaluation, based on the following contact details: (address, telephone number and e-mail address of the authorized representative)

(signature/signatures of an applicant)

(position)

* Paragraph 5 is indicated if an applicant is represented by several legal entities.

**Annex 2
to the Procedure**

**GUIDELINES
for Conducting a Cost-Benefit Analysis**

Cost-benefit analysis is carried out in several stages.

Stage 1. Developing a basic economic scenario:

- 1) collection of financial data in real terms (excluding inflation);
- 2) establishing a financial model and calculating cash flows of an investment project with significant investments, determining terms of implementation of an investment project with significant investments, income and expenses, residual value.

Stage 2. Adjustment of financial data (financial cash flows) to economic cash flows and their adaptation in view of:

- 1) the market imperfections and adjustments using “shadow prices” (which reflects the real price in a particular imperfect market, such as a regulated market (currency, oil, electricity and other commodities, as well as the price of labor, etc.). Actual imperfect market prices should be replaced by “shadow prices” (hypothetical prices in a perfect, unregulated market) and included in the analysis;
- 2) a cost adjustment that takes into account some expenditures that were not used in the financial analysis but should be considered in the socio-economic analysis (costs of public land or public values that will be used for an investment project with significant investments and may be considered a loss of some values for society, costs of overcoming consequences of negative environmental impact,

Unofficial Translation

increasing cost of services for the population, cost of monitoring implementation of an investment project with significant investments and other negative economic and social consequences that can be quantified);

3) a tax adjustment (since the price of goods usually includes taxes that are actually state revenues (and cannot be considered as expenditures from the state’s point of view), – such a tax effect should be excluded from the calculation of expenditures). On the other hand, some indirect taxes may be indicated as additional expenditures, taking into account adjustments to avoid double counting. Another case of tax adjustments refers to imported goods, for which the effect of the relevant import duties should be excluded;

4) additional benefits (time savings, positive side effects on the industry, cost savings, benefits for third parties not belonging to the population directly affected by an investment project with significant investments; reduction of the load on infrastructure; environment improvement);

5) other factors (indirect costs and benefits arising from implementation of an investment project with significant investments, both positive and negative) (noise, environment and impact on it, job loss, travel time from home to work, etc.);

6) adjusting prices (cash flows of costs or benefits) that are expected to grow at a different rate than the average expected inflation to the size of such deviations;

7) losses related to granting state support in all forms defined by Article 3 of the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine” (all tax-exempt funds – amount of taxes and fees not paid to the budget, difference between the fee for land set by the local authority for the relevant category of land in the relevant territory, and the reduced land fee to be paid by the investor, the total costs of all related infrastructure required for an investment project with significant investments, construction of which will be carried out at the expense of state and local budgets);

8) the fact that if economic and social costs and benefits cannot be quantified, they shall be assessed qualitatively and described in the analysis of an investment project with significant investments and the indicators they affect.

Stage 3. Defining baseline scenario, discounting and calculating ENPV and EIRR.

Economic net present value (ENPV) is the difference between the total discounted social benefits and costs.

ENPV shall be calculated by discounting all economic flows to current values using a social discount rate and conducting a sensitivity analysis.

Economic net present value is calculated by the following formulas:

$$ENPV = \sum_{t=1}^n \frac{B_t - C_t}{(1 + i)^t}$$

or

Unofficial Translation

$$ENPV = \sum_{t=1}^n \frac{B_t}{(1+i)^t} - \sum_{t=1}^n \frac{C_t}{(1+i)^t}$$

where ENPV – economic net present value;

B – overall gains (i.e. changes in benefits for users (consumers) in year t;

C – overall economic expenditures in year t;

i – social discount rate;

t – period number during which benefits and costs are discounted;

n – total number of periods.

It is recommended to use a social discount rate of 5 percent for hryvnia/UAH, but this discount rate is subject to annual recalculation by the Ministry of Economy due to the method of estimating the social opportunity cost (SOC) in view of the cost of raising capital by the public sector and deducting the inflation rate. The recalculation results are subject to publication on the official website of the Ministry of Economy no later than June 1. In the absence of an updated social discount rate, the previously determined rate is used.

Economic internal rate of return (EIRR) – a rate that gives zero value for ENPV.

$$ENPV = \sum_{t=1}^n \frac{B_t - C_t}{(1+EIRR)^t} = 0.$$

An investment project with significant investments is economically justified if $ENPV > 0$ and $EIRR >$ social discount rate, and thus the performance indicators show that an investment project with significant investments generates or can generate more benefits than costs, given the different timing of costs and benefits.

In case of justified impossibility to calculate EIRR, which is indicated in the feasibility study of an investment project with significant investments, it is not considered when conducting a cost-benefit analysis.

A benefit-cost ratio (BCR) is defined as the ratio between discounted economic benefits and costs:

$$BCR = \frac{\sum_{t=1}^n \frac{B_t}{(1+i)^t}}{\sum_{t=1}^n \frac{C_t}{(1+i)^t}}.$$

Stage 4. Measuring uncertainty and risks in the analysis is carried out by:

1) risk adjustments (risks inherent in an investment project with significant investments shall be quantified. The cost of risk is determined by multiplying its probability as a percentage and the expected expenditures during its implementation. Thus, all significant risks are assessed, the probability of which and the outcome can be reasonably evaluate);

Unofficial Translation

2) uncertainty testing by analyzing the sensitivity to the most important variables and identifying additional (marginal) scenarios (pessimistic, optimistic);

carrying out sensitivity analysis (changes) of EIRR and ENPV indicators related to changes in the relevant input data. The result of sensitivity analysis (effect on EIRR and ENPV) should be presented as a percentage and in absolute terms. Sensitivity analysis can only be performed for critical variables (eg, level of investment, main items of operating expenditure, cost of borrowing, etc.), which should be determined by qualitative or expert evaluation.

**Annex 3
to the Procedure**

CONCLUSION

on the expediency/inexpediency of implementing an investment project with significant investments and concluding/refusal to conclude a special investment agreement

General Information			
1.	Project name		
2.	Field of project implementation		
3.	Amount of significant investment, thousand hryvnia		
4.	Amount of necessary investments by sources of financing and years, thousand hryvnia	including: own funds	
		borrowed funds	
		other	

Unofficial Translation

5.	Project implementation period	start of implementation, year	
		completion of implementation, year	
6.	Amount and form of state support by years	form of state support	
		amount of state support, thousand hryvnia	

Financial, economic and social indicators of investment project with significant investments efficiency

1.	Discounted payback period (DPP)	
2.	Net present value (NPV)	
3.	Internal rate of return (IRR)	
4.	Weighted average cost of capital (WACC)	
5.	Economic internal rate of return (EIRR)	
6.	Economical net present value (ENPV)	
7.	Social discount rate	
8.	Number of new jobs that meet the requirements set out in Article 5 of the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine”, units	

Results of the evaluation of an investment project with significant investments

	Criteria for evaluation	Results of evaluation
1.	Compliance of an investment project with significant investments with the requirements specified in Article 5 of the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine”	

2.	Compliance of an applicant with the requirements for financial capacity for implementation of an investment project with significant investments, approved by the Cabinet of Ministers of Ukraine	
3.	The absence with regard to an applicant of the restrictions, defined by paragraph 4 of Article 7 of the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine”	
4.	Compliance of forms and total amount of state support offered for implementation of an investment project with significant investments with the provisions of the legislation	
5.	Compliance of a draft special investment agreement with the provisions of the legislation and comments on its completion (if needed)	
6.	Economic, financial, social and/or environmental risks and/or negative consequences that may be caused by implementation of an investment project with significant investments (in case of preparation of the conclusion on expediency of implementing an investment project with significant investments feasibility study of which provides for a necessity of carrying out an environmental impact assessment and/or development of documents of the state planning and their strategic ecological assessment, such a conclusion shall state that implementation of an investment project with significant investments is possible upon obtaining a positive conclusion on the environmental impact assessment and conducting strategic environmental assessment)	
7.	Occurrence of inaccurate information in an application submitted by an applicant	
8.	Overall conclusion	

_____ (position of the head of the authorized body) _____ (signature) _____ (initials and surname)