Breaking ground: U.S.-Ukraine mineral deal ratified in Ukraine, paving the way for reconstruction

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On May 8, the Ukrainian parliament voted to ratify the landmark mineral deal (https://bit.ly/4kgtUwq) with the United States, marking a significant step in the relationship between the two nations and potentially U.S.-Ukraine reconstruction efforts. This agreement aims to align and entwine the economic incentives of Ukraine and the United States, while bolstering Ukraine's security and economic recovery by leveraging its natural resources and utilizing U.S. mineral extraction technologies.

The ratification sets the stage for substantial investments in infrastructure and development. As Ukraine looks for ways to strengthen its ability to fend off military aggression and navigates the complexities of rebuilding, this deal could be a cornerstone in revitalizing its economy and fostering long-term stability. This article will address the legal framework, key details and issues that are still in development.

A. Mining the details: unpacking the deal's mechanics

The document ratified this month is a framework agreement between the United States and Ukraine. The framework agreement contemplates a "limited partnership agreement," (the "LPA") the draft text of which has not been officially disclosed, that will be entered into by the U.S. International Development Finance Corporation (the "DFC") and the Ukrainian Agency on Support Public-Private Partnership (the "PPP Agency"). It is anticipated that the negotiation and signing of two technical accords (https://bit.ly/45fq6ap) under this framework agreement will occur over the coming month.

The DFC, established in 2019 through the Better Utilization of Investments Leading to Development (BUILD) Act of 2018, is the United States' development finance agency. The DFC's mission is to partner with the private sector to finance solutions to critical challenges in developing countries, thereby advancing U.S. foreign policy and economic interests abroad. The PPP Agency, established in 2018, is the Ukrainian government body charged with promoting and implementing PPPs whose track record includes the execution of two major seaport concession projects Olvia and Kherson in 2020 (https://bit.ly/43kftAy).

Ukraine will initially contribute to the fund rights to 50% of the revenue received from (i) new minerals and hydrocarbon licenses and (ii) licenses that, although awarded, have not yet been industrially exploited. The framework agreement covers 55 minerals, oil, natural gas and such other minerals and hydrocarbons as DFC and the PPP Agency may agree in the future. The United States will have counted towards its capital contributions the value of the military aid that it provides to Ukraine starting from the date on which the framework agreement becomes effective.

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The new fund will invest in infrastructure projects in Ukraine. As governmental authorities in Ukraine issue new licenses, production sharing agreements (PSAs) and concessions to develop resources, they must require that the investors that were awarded mining or concession rights make available to the new fund the opportunity to participate in capital raises for the projects. Further, the investors cannot grant to any third party materially more favorable financial or economic terms for a substantially similar investment opportunity as that offered to the new fund.

The United States also receives the right to negotiate offtake arrangements on market-based commercial terms with the holders of the newly issued licenses. The licenses will additionally (i) require their holders to refrain, for a specified period and under conditions to be outlined in the forthcoming LPA, from offering materially more favorable terms for offtake of a substantially similar quality or quantity of product to any persons other than DFC or its designees and (ii) contain restrictions on the persons with whom offtake arrangements can be entered into.

B. Unearthing unknowns: issues to develop

As the U.S.-Ukraine mineral deal moves forward, several critical issues remain to be addressed. These uncertainties will shape the effectiveness and impact of the framework agreement, raising important questions about its implementation and long-term benefits.

Fund governance structure: Despite the new fund being described as a limited partnership, there is no mention of a general partner, a person typically responsible for management of the limited partnership and exposed to unlimited liability, in the framework agreement. Nonetheless, Ukrainian officials have stated (https://bit.ly/45fq6ap) that they expect a general partner to be hired.

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Who such person will be is to be seen. As is the exact contour of such person's role and relationship with the six-member board described by the White House on May 1, 2025, which is to be comprised of three Ukrainian and three American directors.

The exact nature of the entity (e.g., supranational organization vs. Delaware limited liability company or limited partnership) is to be seen as is how, if at all, the fund will address deadlock risk in decision making. It is clear though that it will not follow the trust fund management model utilized by the World Bank's multi-donor Ukraine Relief, Recovery, Reconstruction and Reform Trust Fund (https://bit.ly/43pxRbt), which combines donor grants within a trust managed by the Bank, or the European Union's "EU for Ukraine Fund" (https://bit.ly/4jVulHf), operating as a trust fund administered by the European Investment Bank.

Cash for investment: Large amounts of cash will be necessary to develop Ukraine's mineral resources and ultimately to make the new fund successful.

While some mineral extraction, like Titanium (https://bit.ly/4j8IKV0), is already occurring in Ukraine, much of the rare earth minerals discussed is not. Mining consultants estimate that a country's mining sector can take 10 to 20 years (https://reut.rs/4jaivgB) to establish and that it costs approximately US$2 billion (https://bit.ly/4dhKjyq) to reach an operational stage for a single rare earth minerals mine.

Another immediate hurdle is that much of Ukraine's infrastructure has suffered under the war, Ukraine's mineral reserves require further mapping and confirmation as its current geological information is non-comprehensive and outdated and many deposits may be in occupied territory.

Because the revenue rights being contributed by Ukraine are only theoretical as a result of their derivation from new and unexploited licenses, an additional source of funds will be necessary to jump start projects, build infrastructure to transport natural resources and create the virtuous cycle of reinvestment contemplated under the new fund. Ukrainian officials have voiced (https://bit.ly/4mjOw8X) an expectation that the United States will provide some startup capital for the new fund.

Existing rights holders: While it remains to be seen how LPA and any technical accords will frame Ukraine's obligations to ensure the fund's capital raising participation and product offtake rights under the future license awards, there are also questions about whether it will ultimately be extended to reach the existing minerals projects that have not progressed to the actual mining stage and if not so extended how development of such existing projects will be incentivized.

As the resources covered by most existing PSAs are in close proximity to the frontline, they remain dormant in anticipation of a peace agreement. There also are multiple idle non-PSA mining licenses (https://bit.ly/3FeiQ42). To date, there has been no official public report stating the exact number of such projects.

The minerals deal could serve as a catalyst to withdraw and re-tender these idle non-PSA licenses, which may be withdrawn if no exploitation has commenced within six or 12 months following the award date depending on the type of minerals covered by license, and though, less likely, PSAs which generally contain more robust investor protections.

Following the vote to ratify the framework agreement, Mr. Fedir Venislavskyi (https://bit.ly/4jbJtom), MP and Member of Parliamentary Committee on National Security, Defense and Intelligence, stated that large-scale audits of the dormant licenses should occur to identify the steps to be taken to tackle the issue.

If the deal were to be extended to reach these dormant mining projects, the Ukrainian Parliament would have to put in place new legislation. Presently there is no clear mechanism to incorporate the abovementioned fund's rights into the already awarded mining licenses and PSAs. Unless amicably agreed with existing PSA investors, extension of the deal's arrangements beyond newly issued PSAs could be particularly challenging because such existing PSA investors enjoy legislative stability protections against adverse changes in laws (except where such changes concern environmental protection, defense, national security or public safety).

If the new fund's reach is not extended to touch these dormant mining projects, then additional questions are raised about how development of these projects will be propelled forward to advance Ukraine's rebuilding and ultimately the success of the new fund which will share in 50% of the revenues ultimately generated by such projects.

Role of the private sector: Given the need for funds for investment and desire for strategic alignment through economic investment, it would be natural for there to be an enhanced role for U.S. private sector investment. The framework agreement does not provide clues as to how U.S. companies will participate in reconstruction efforts.

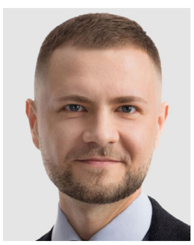
Possible avenues that the United States and Ukraine may pursue include:

- fast tracking the issuance of Ukrainian mineral and hydrocarbon licenses to entities with significant U.S. investment;
- permitting U.S. companies to bid for projects with the new fund offering financing or guarantees;
- the new fund favoring investments in projects with U.S. co-investors; and
- the DFC and PPP Agency issuing bonds financed by U.S. investors.

Ukrainian officials have already noted (https://bit.ly/4mjOw8X) their expectation that the new fund will look for investors in projects offered to the fund — including U.S. companies.

As Ukraine embarks on this transformative journey, the ratified mineral deal with the United States offers a promising path forward. While challenges remain, the success of this framework agreement could shape the future of both nations and set a precedent for global reconstruction efforts.

About the authors



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