

EFFECTIVE LEGAL MANAGEMENT OF INVESTMENTS – THE BASIS OF SUSTAINABLE ECONOMIC DEVELOPMENT

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Abstract

The main purpose of the study is to clarify the role and place of legal means in the mechanism of investment management. The paper deals with the problems of financing in the implementation of investment projects in the framework of public-private partnership, and examines the mechanism of coordination of public and private goals and interests in the implementation of projects. The methodology of the study was:

system-structural approach, comparative legal method, functional method and method of interpretation. The main results of the study are as follows: based on the analysis of the application of the current transport and investment legislation, the conclusion is made about a certain imperfection of the implementation of the mechanism of public-private partnership in transport.

Keywords: investor, investment, transport sphere, legal regime, investment relation

1 INTRODUCTION

State and inter-state investment management is primarily associated with the establishment of the organizational and legal framework. As for the legal framework, it is, first of all, the creation of a regulatory model for investment activities. States in accordance with international law provide guarantees: stability of the rights of subjects of investment activity, non-interference of state bodies in the activities of investors, protection of investments, ensuring equal conditions for the activities of investors, protection against illegal nationalization, etc.

At the same time, States guarantee the protection of capital investments and the stability of investment legislation to the subjects of investment activity, regardless of jurisdictions. The investor should be provided with the inviolability of the property constituting the investment and a certain procedure for resolving disputes over investments provided by law. An additional guarantee of protection of investors' rights in the implementation of the investment project is the creation of conditions for insurance of investment risks.

2 RESEARCH METHODOLOGY

The methodology of the study consisted of a system-structural approach related to the analysis of investment and transport legislation systems, programme acts in the areas of financial and transport regulation, the identification of the role of the definition of legal and regulatory frameworks in development, in a certain sequence of adopted acts and their impact on the system of legal management of investments; The comparative legal method is related to the analysis of investment and transport legislation, the identification of similarities and differences in the adopted normative and legal acts, in the means of legal regulation of the economy; The functional method involves an approach that seeks to reconcile private interests with shared ones to achieve public-private partnership objectives; Method of interpretation - is aimed at explaining special terms and legal constructs for their application in legal practice.

3 RESULTS AND DISCUSSION

Legal and Regulatory Framework for Investment in the Russian Federation

Public investment management will include binding measures at all levels of government. According to Art. 11 of the Federal law of February 25, 1999 No. 39 "About investment activity in the Russian Federation performed in the form of capital

investments" measures of public management of investments are subdivided into two groups.

The first group consists of organizational measures to determine the conditions of investment activity (registration of legal entities, licensing, state control and supervision). The second group consists of measures of direct participation of the state in investments (provision of budget loans, funds in the authorized capitals of companies).

The state can provide guarantees on a competitive basis by issuing bonds, granting concessions to investors on the basis of trading results. The main thing is that the government must create conditions for investment activities. For this purpose, financial and legal measures should be taken to stimulate investment and related to the protection of investors' rights: state registration of legal entities and individual entrepreneurs, state registration of real estate transactions, registration of the rules of trust management of a mutual investment Fund, licensing of certain activities, preliminary approval and notification of transactions involving investment, provision of a subsoil plot for use, adoption of antitrust measures, provision of financial support measures.

The provision of financial support measures may include the following measures: the provision of subsidies (on a gratuitous and irrevocable basis for the compensation of lost income), state (municipal) guarantees; pledge of state and municipal property, deferral and installments for the payment of tax, the provision of investment tax credit, the creation of special economic zones, the implementation of state control (supervision) measures, etc. The second group of public investment management measures is related to the direct participation of the state in investment activities. Accordingly, the forms of direct participation of the state in investment activities are: the direction of budget investments to increase the value of property (for example, in the authorized capital); the provision of budget loans to another budget system, a legal entity; the introduction of state property as a contribution to the authorized capital of the company.

The Federal law in article 1 "On investment activities in the Russian Federation carried out in the form of capital investments" №39-FZ (ed. from 26.07.2018) defines an investment project as "justification of economic feasibility, volume and timing of capital investments, including the necessary design and estimate documentation developed in accordance with the legislation of the Russian Federation and approved standards (norms and rules), as well as a description of practical actions for the implementation of investments (business plan)". State bodies and municipalities determine the appropriate objects for investment activities, providing for the amount of budget and private funding.

It is important to note that non-investor customers acquire ownership, use and disposal of these capital investments for the duration of the contract. Thus, according to Art. 4 of the Law, the investors can be users of objects of capital investments, and subjects of investment activity can combine functions of two and more subjects. Investment relations in transport are contractual and other agreements related to investment in the transport sector, between investors and other business entities.

The relations between state bodies and investors in the sphere of General (financial, administrative) regulation are non-basic, subsidiary. In terms of investment, only the investor is a mandatory entity. Legal regulation of investments is cross-sectoral, including transport legislation in General. Acts of investment and transport legislation

together regulate the execution of investment contracts, guarantees and state regulation of investment activities. PPP acts as a form of organizational and legal interaction between the business entity and public legal education in the implementation of socially significant projects. "Public-private partnership is a kind of joint investment activity in which the public and private partners interact with each other on the basis of pooling resources and distributing risks in order to achieve a certain socio-economic result.

The norms regulating public-private partnership relations belong to the sphere of entrepreneurial investment law" (Popondopulo & Sheveleva, 2015). The legislation establishes forms of partnership and state support, conditions for participation in projects of public authorities and private partners. "In modern conditions, characterized by the development of foreign economic relations, the attraction of foreign investment in the Russian economy is of particular relevance. Foreign investment for Russia is one of the most important factors in the development and stabilization of the economy.

Each state interested in attracting foreign investment in the national economy, seeks to create the most favorable conditions for investment activities, creating a certain legal regime that determines the basis for the activities of foreign entrepreneurs in the national economy" (Popondopulo & Sheveleva, 2015) . It should be taken into account that article 1 of the Federal law of February 25, 1999 №39 "On investment activities in the Russian Federation, carried out in the form of capital investments", defines that investments include cash, securities, other property, property rights, other rights that are invested in business objects to achieve a useful effect. Investment relations in the transport sector are from a legal point of view transactions aimed at investing in the capital of the transport organization, transport infrastructure and other objects of the agreement, the result of which are newly emerged rights and obligations in respect of property, income from it, rights to it, etc.

In accordance with the Federal law of February 25, 1999. No. 39 "On investment activities in the Russian Federation carried out in the form of capital investments", Federal law of July 9, 1999 "On foreign investments in the Russian Federation" investments are defined as an object of civil rights owned by the investor who invests in the object of investment activity for income (Pravkin & Kovnerev, 2018). The investor has the right to transfer his rights under the contract to other persons, which allows both transport and investment legislation. "The use of PPP mechanisms will allow the regions of the Russian Federation not only to increase their investment attractiveness, but also to compete successfully in the fight for foreign investors" (Kasatkina, 2018).

In General, the rights and obligations of investors who invest in transport infrastructure are set out in a contract or agreement, such as a concession agreement. The object of investment activity (transport communications, system of logistics hubs and transshipment points, port infrastructure) can bring income in the future. From a legal point of view, investments in transport communications are a transaction. The investor may act as the purchaser of a property, as lessor, shareholder of the lessor, grantor or the concessionaire, etc.

These relations can be legal in nature: civil law (contracts), financial and legal (state registration of issue of securities and budget financing of transport projects), administrative and legal (permits, licenses, antitrust control, membership in self-regulatory organizations) (Pravkin & Kovnerev, 2018). Forms of state support for investment activities in transport are: budget loans, subsidies, state guarantees and obligations, including data in accordance with international agreements.

Normatively-Legal Government Base by a Transport in Russian Federation

Constitution of Russian Federation in an item 71 determines that management by a federal transport, behaves the ways of report to the conduct of Russian Federation. In civil code of Russian Federation, the relations related to a transport sphere are well-regulated in chapter 40. The block of basic norms of a transport right is contained in the Air code of Russian Federation, Code of trade seagoing, Code of internal water-carriage, Charter of motor transport and public surface electric transport, Charter of railway transport and other acts.

The sources of a transport right are also decrees of President of Russian Federation and decision of Government Russian Federation. The legal mode of activity of foreign investors cannot be less favourable, than the mode given by a national investor, if other mode is not set by a law. The large array of imperative norms is set in a transport legislation. Large influence on maintenance of norms of a transport legislation is rendered by международно-правовые acts. Public education participates in investment relations as a civil legal side.

But in literature there is another position qualificatory investment agreements as administrative agreements, i.e., carrying public character. Rights are passed actually by disagreeing of equal in rights participants, and by the concession of these rights from a public side to the private side. At the searches of investment attractiveness, the basic tasks of Transport strategy are aimed.

The possible ways of participation of the state mark "strategy in investment activity on a railway transport, such as: is a grant of budgetary facilities within the framework of the federal having a special purpose programs; - joint with open society RZHD financing of investment projects on the terms of privately-state partnership; it is introduction of investment constituent to the freight tariffs for realization of infrastructural projects" (Berjakov, 2016). A transport strategy was developed taking into account three basic factors: strengthening of the global competition on markets, related to the change of traditional пассажиропотоков and growth of requirements to a transport service, related to entering to WTO; an increase of role of quality of professional shots is in a transport sphere; strengthening of factors of innovative development and smooth abandonment from the economy of raw material type.

The "main having a special purpose reference-points of Transport strategy of Russian Federation on a period 2030 to is a decline of accident rate, risks and threats of safety on all types of transport. Implementation of the put tasks is possible, when all subjects, from the highest echelons of power to the certain workers of transport, will implicitly carry out programmatic aims and all normatively-legal acts, rules guaranteeing safety on a transport" are prescribed in that (Dyhno, 2018). N.A. Dyhno (2018) marks that the badly lined up an infrastructure, her insufficient maintenance and illegal exploitation create the threats of safety in all spheres.

The main consists of that a transport infrastructure must correspond to the technical and legal norms. In providing of the legal adjusting on a transport a practical value has the legal adjusting of transportation, that "is a major instrument, providing functioning of a transport system, her safety" (Oveckin, 2018).

Infrastructural Projects as Method of Providing of Quality and Steady Height of Economy

It is necessary to take into account that the tasks of height of economy can and must be qualitatively and in number provided by a transport complex. Constantly demand increases on transport-logistic services. It is necessary to take into account development of the system of transport services abroad, transport-engineering infrastructure and development of new types of transport.

Due to updating of infrastructure and increase of speed of delivery of loads it is possible substantially to increase the value of transit transportations. Transport expenses are reflected in the cost of eventual products. By comparison to the foreign sector of transportations and service in a Transport Strategy of Russian Federation, expected 2030 to, the subzero technical state of transport and transport system is marked on the whole.

The wear of railway infrastructure exceeded possible limits, грузонапряженность grows, but the proper volumes are not entered, the carrying capacity of railways falls. Aging of capital assets is observed practically on all types of transport. Even the frequent increase of tariffs was not able to normalize financial position of most companies-ferryman, railway tariffs often restrained temper disproportionate as compared to the height of tariffs of another companies to that the sphere of transport is related (Pravkin & Astremski, 2018).

The increase of financing is needed not only from the side of private investor but also strengthening of measures of the budgetary financing is required. Why not to increase the investment of the state in development of her infrastructure. Especially as a main railway transport is in a public domain and functions with subzero profitability. Insufficient development shows up and mechanisms of state-private partnership on a transport.

The Normatively-legal adjusting of a transport sphere falls behind from realities of economic development. For realization of investment projects within the framework of development of power, transport and engineering infrastructure facilities can be involved federal and regional investment funds. On financing of projects within the framework of Public-private partnership (PPP) can on recurrent basis be used facilities from the fund of national welfare.

Foreign participants, the persons of other jurisdictions can participate in co-financing of project, but there can his initiator be only the Russian legal entity on determination of law. Usually like participation comes true on the basis of principles of the project financing by participating in the stake of charter capital of project company. "What presently envisaged in the legal adjusting of relations of publicly-private partnership in this part? Studying the Federal law of N provisions 224- FZ "About state-private, municipally-private partnership.", Federal law of N 115- FZ "About concession agreements", becomes obvious, that the materially-legal adjusting is ousted, substituted by procedural - by the detailed description of regulation of work, terms, numerous concordances" (Kilincarov, 2018).

Management features in the field of realization of objects of PPP is: long-termness of grant of services, shifting of responsibility on a private partner, variety of different forms of the contracts related to realization of models of PPP (Ivanov & Gabina, 2018). Can be used following and another models: 1. "Acquisition-building-exploitation" (BBO: Buy - Build - Operate) - related to modernisation and exploitation of property on a

certain term under control a public partner; 2. "Building-possession-exploitation" (BOO: Build - Own - Operate) is supposed that a private partner does service on the basis of lease; 3. "Building-possession-exploitation-transmission" (BOOT: Build - Own - Operate - Transfer) - based on that object of agreement after expiration of term of his exploitation on the terms of deductible, again passes to the public partner.

By combination of different models there are distribution and redistribution of risks and responsibility between частным and public partners. Except the most private partner the participant of agreement can be a financing person, in a role of that not only the Russian legal entity but also foreign person can come forward already, as well as the association of foreign legal entities is equal. In the п.3 item of 1041 civil code the features of creation of agreement of joint venture are envisaged and taking into account Ф3 from November, 28 2011 №335 "About an investment association" this possibility to participate in him to the foreign legal entities is envisaged just.

Projects within the framework PPP in a greater degree realized at municipal level. In a transport sphere realized approximately 10-15% projects within the framework PPP on the whole on all levels. Such result is constrained foremost with heavy tolls on realization of the programs of development of a transport sphere, for example, of railway industry. Open society RZHD here can come forward both on the side of частного and on the side of public partner. In concession announcements of Open society RZHD comes forward exceptionally on the side of public partner. 1987 "to the only sourcing of railway transport were budgetary facilities.

In a transitional period the mixed financing came true from facilities of the state budget, facilities of Ministry of ways of report of Russian Federation and attracted facilities. From 1999 financing of railways took place mainly from facilities of Ministry of ways of report of Russian Federation, and then Open Society "The Russian railways" and private companies.

The separate cases of building of railway infrastructure on principles of PPP met long before formation of Investment fund" (Popondopulo & Sheveleva, 2015). In opinion of V.V. Kilincarov a law takes into account greater part of interests of public and private partners that have possibilities to realize projects on the model of peculiar. Thus the increase of solvency of projects of PPP is assisted also by the presence of possibility of mortgage on the object of agreement with the purpose of financing of project, requirements are absent as at a concession about application of model agreements, there is possibility of conclusion of the direct acceding to financing organizations. "So or differently, it is further possible to consider for simplicity, that state-private (publicly-private) partnership in Russia is the concession agreements regulated by Law on concession agreements, and also agreements, about PPP statutory N 224-FZ, or agreements about PPP, prisoners on a regional legislation to 01.01.2016, when Law N injured 224- FZ, and structured both on the model of concession and on the model of PPP.

Depending on a context under PPP can also understand the certain type of agreements are agreements about PPP statutory N 224-FZ. All above-stated types of agreements in totality can be named agreements in the field of publicly-private partnership" (Tsaritsynski, 2018). Among the basic lacks of law of Kilincarov V.V names imperfection of Law №of 224-FZ related to maintenance of rules about objects and subjects of agreement foremost, it is special norms about the mortgage of object for a public partner, overpriced requirements to the private partner, complicated order of bringing in of subcontractors and other the privileges related to participating in a

competition on a right for the conclusion of treaty are absent also, in case of loss in a competition no compensation of expenses is present.

The all said on the whole creates obstacles for bringing in of investments in large investment projects. There are so-called critical risk that often outweigh all advantages. Therefore, in practice, if possible, the tested chart of conclusion of concession agreements is used. Normatively-legal providing of a transport complex, including on the basis of PPP, also not enough, taking into account foreign experience.

There is not sufficient development of state-private partnership in a transport sphere with clear distribution of zones of responsibility, priority directions. Quality of transport services falls short of to the parameters certain in the having a special purpose programs of development of transport. "Another important problem is an insufficient level of competitiveness of domestic companies and all transport system of Russia on the whole in the world market of transport services.

It contingently both the indicated problems and insufficient possibilities of home transport organizations to compete in the world market, including effectively to use geopolitical advantages of Russia for transit international transportations" (Tsvetkov & Medkov, 2008). Researchers mark that PPP on a railway transport does not assist development of another industries of economy, unconnected with development deposits of raw material, that these capital investment project within the framework PPP is related to "ramal building" and gasket of "capillary lines", roads of the ungeneral use, and it is here necessary to develop the railway infrastructure of the general use. In respect of railways, then intercommunication of separate projects is here needed within the framework PPP with general directions and strategy of development of transport in the Russian Federation ratified 2030 to.

4 CONCLUSION

A law on PPP, in spite of defects, gives possibility of concordance of general and private aims, public and private interests by realization of the investment projects related to the receipt in the peculiar of objects of infrastructure. These objects are the real investments, real investments in long-term projects with the large terms of recoupment. Here a private partner is interested in the quickest realization of project, to go out on his recoupment.

These facilities do not leave from Russian Federation, on determination of law a private partner there can be only the Russian legal entity. With the use of mechanism of PPP the state attracts a private investor in infrastructural projects. A law on concessions from 2005 allows using the mechanisms of financing of a transport industry private investors that give the considerable volume of investments. "Private investments in transport projects it is assumed to lead to a to 4-5 % GDP, and proportion of the state and private financing - to approach by 35: 65. Certainly, hardly all infrastructural projects in Russia will develop in form concessions.

The order of selection of projects and selection of facilities is not worked out on concession agreements from the Investment fund of Russian Federation. The conclusion of the concessions oriented to modernisation and exploitation of operating property complexes is more credible. The state, today, does not see other way, except as bringing in of large shippers - нефтяников, coal miners, metallurgists, chemists - to the reconstruction and building of railways of the general use" (Rubtsova, 2016).

Thus the expenses of financing go down from the side of the state on an infrastructure (Popondopulo & Sheveleva, 2015). PPP in the conditions of decline of inflow of foreign investments gives an opportunity to involve an internal investment mechanism, including for optimization of expense of budgetary facilities, thus both at federal level and on regional and municipal levels.

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