

Development of normative-legislative provision of state-banking partnership in ukraine

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Annotation:The analysis of the legal framework for regulating the development of public-private (state-banking) partnership in Ukraine is carried out. Attention is drawn to the fact that the problem of inconsistency of the relevant laws and regulations on the regulation of public-private partnership, which often contain different rules on the same issues in this field, and the mechanism of implementation of such projects, is quite problematic and of the highest priority for state regulation. is not unambiguous and unified.

The priority plan of changes is outlined, which takes the following form: amending the legislation on public-private partnership for the purpose of its uniform application and interpretation; introduction of a unified procedure for all types of state-bank partnership agreements; development of an authorized state body responsible for the development of state-banking partnership in Ukraine; strengthening the functions of local self-government bodies in the sphere of state-banking partnership; a clear division of functions between the relevant public authorities regarding the implementation of state-bank partnership projects; introduction of a single model contract of public-private partnership.

Key words: development, normative-legislative, provision, state-banking partnership.

1. Introduction

Legislative and normative regulation of socially significant processes, creation of a basis for the functioning of various legal forms of the combination of public and private interests is in the plane of the effectiveness of the legal mechanism of public administration.

The banking system in any country is an important component of the economy, has a significant impact on the activities and development of society. However, at present, issues related to the relations between the state and banks are not regulated by numerous legislative acts, among them there is no specific law on such partnership.

2. The results

In general, the legal framework for the development of public-private partnerships are: the Constitution of Ukraine, the Civil Code of Ukraine, the Economic Code of Ukraine, the legislative acts of Ukraine. In addition to laws, some issues of public-private partnership development are governed by resolutions and orders of the Cabinet of Ministers of Ukraine, regulations and orders of central executive bodies, decisions of local executive bodies and local self-government bodies. Among them are the following: Decisions "On Approval of the Procedure of Substitution of a Private Partner under a Contract concluded within the Public-Private Partnership", "On Approval of the Procedure for Provision of State Support to Public-Private Partnership Implementation", "On Approval of the Procedure of Provision of Information by a Private Partner to a Public Partner on the implementation of the contract concluded within the framework of the public-private partnership "and" Some issues regarding the organization of the implementation of the public-private partnership "; Order "On Approving Methodological Recommendations for the Application of the Methodology for Detecting Risks of Public-Private Partnership, their Evaluation and Determining the Form of Management"; Order "Some Issues of Performance Analysis of Public-Private Partnership Implementation"; Order "On Approval of the Concept of Public-Private Partnership Development in Ukraine for 2013-2018".

It is on the basis of legislation, in the light of its norms, that contracts and other legal documents concerning public-private partnership are subsequently concluded.

Therefore, in the context of consideration of this issue, it should be noted that the regulatory framework for regulating the development of public-private partnership in Ukraine is too complex, multilevel and bureaucratic, which in the conditions of high level of corruption creates risks for the effective use of this mechanism, and therefore requires constant improvement.

Analyzing the legal regulation of the implementation of the public-private partnership mechanism in Ukraine, it can be argued that these legislative acts are far from ideal (including in the context of regulating relations in the public-banking partnership) and require significant improvements. That is why the identification of shortcomings in the legislation, targets of this type of interaction between the state and business as a means of meeting public needs, the identification of conceptual approaches to the formation of the mechanism of state-banking partnership will allow to outline the main directions of improvement and on the basis of key parameters of development of this activity in our country.

The problem of the inconsistency of the relevant laws and regulations on the regulation of public-private partnerships, which often contain different rules on the same issues in this field, is rather problematic and of the highest priority for the state regulation, and the mechanism of implementation of such projects is not clear and unified. In our opinion, this problem arises due to the uncertainty of the relation between the Law on Public-Private Partnership and other legal acts regulating the implementation of the partnership, since the procedure and mechanism for its implementation are not transparent and clearly defined and require clear action by the government in the direction of unification of the legal framework of the respective sphere.

At the same time, the legally prescribed list of areas of public-private partnership application is insufficiently exhausted, which does not meet international standards.

Another problem in the area of public-private, in particular public-banking, partnerships is the lack of clearly defined criteria and requirements for the partnership agreement. Yes, Art. 5 of the Law on Public-Private Partnership provides that a contract concluded within the framework of a public-private partnership may contain elements of various contracts (mixed contract), the terms of which are determined in accordance with the civil law of Ukraine. However, the relevant Law does not provide for the essential requirements to be contained in a public-private partnership agreement. In our opinion, the absence of such standard contracts can also be explained by the fact that in Ukraine the practice of implementing projects in the field of state-banking partnership is rather insignificant, as well as the lack of proven rules for the implementation of state-bank partnership projects. The essential conditions are stipulated by the Law of Ukraine "On Concessions", but they are based on the principles that apply to ordinary public procurement, which does not take into account the specifics of public-private partnership projects. Moreover, information support remains a pressing issue through the registration of such agreements and their publication in the print media and on the website of the controlling body, which we, in fact, propose to implement.

Another priority task was to build an authorized state body responsible for the development of public-private (state-banking) partnership in Ukraine and to establish its interaction with other state institutions in order to avoid duplication of functions in the sphere of public-private partnership. The Ministry of Economic Development, Trade and Agriculture of Ukraine, as a leading body of state power in the development of state economic policy and responsible for the development of state-banking partnership, should ensure: the formation of strategic directions for the development of state-banking partnership in Ukraine, which provides for the creation of an appropriate strategy, legal and organizational support.

There is an urgent need for the functioning of the State Agency for Investments and Management of National Projects of Ukraine, which in its activity should consistently become a full-fledged institute of development in the investment sphere, whose role will be in the methodological and organizational support of the implementation of National State Banking Projects.

Another important step is to strengthen the functions of local self-government bodies in the sphere of state-banking partnership in Ukraine and to regulate the interaction of local self-government bodies and the authorized state body responsible for the development of state-banking partnership in Ukraine, which will provide for the right of these bodies within their powers. and current legislation to independently decide on the feasibility of implementing and implementing state-bank partnership projects, receives you have the advisory and methodological assistance of the authorized body and the obligation to coordinate your activity with the relevant central executive bodies.

In the course of this study, we found out that the main problem, from the bank's point of view, is the presence of significant risks of investing in capital-intensive facilities in the absence of state guarantees due to political instability in the country. In order to improve the implementation of the state-banking partnership in Ukraine, it is necessary to create a logical model of relations between the state, banks and society, focusing on the best European and world practice, including taking into account the current crisis trends.

Therefore, in view of the above, we propose the following directions for improving the regulatory regulation of the development of the state-banking partnership: removing obstacles to its implementation at the legislative level; development and coordination of its national, sectoral and regional strategies; ensuring transparency of state-bank partnership projects; expanding the legislative framework by regulating standards for innovation; maximum protection of the rights and interests of participants of the state-banking partnership; creation of a system of both direct and indirect

support of its participants; regulation of the system of selection of participants of the state-banking partnership; expanding the capacity of state executive bodies to apply tools to support state-banking partnership programs; creation of bodies for control over public-private partnership projects.

In addition, in order to create a more favorable environment for private partners to invest in PPP projects, we propose to increase the level of protection of their rights and legitimate interests through the following measures: to develop a mechanism for equitable compensation in the event of early termination of a public-bank partnership agreement at the initiative of any partners for the purpose of compensation for reasonable losses; to develop a mechanism for compensation by the public partner to the private partner of the difference between approved and economically justified tariffs (prices) for services (goods); to identify the types of support for public-bank partnership projects that may be provided by public authorities or local governments.

Problems of the existence of non-transparent forms of public-private partnership at all stages, from selection of investment projects carried out by state agencies, investment and sectoral funds, redistribution of resources and property of state and communal property in "manual mode", which leads to corruption, can be a fraud, eliminated due to legislative fixing:

- ✚ norms of targeting investment projects to achieve national priorities and other projects of regional (local) importance (it is proposed to amend item 1 of Article 4 of the Law of Ukraine "On Public-Private Partnership" regarding the scope);
- ✚ the main provisions of the medium-term, annual and operational (quarterly and monthly) financial planning of each investment project within the framework of public-private partnership (should be supplemented with the provisions of Article 22 of the said Law regarding the definition of powers of the central body of executive power implementing public policy in the field of public-private partnership);
- ✚ rules for exercising control over the implementation of the investment project and compliance with the terms of the relevant contract, the formation of a single register of investment projects and concluded contracts, accounting and preparation of financial statements in the context of projects. This, in contrast to the existing approaches - monitoring the implementation of the contract, creating a register of only concession contracts, will allow to account for all projects (the main parameters of which are fixed by the contracts) and to reflect long-term and current assets and liabilities invested by partners (it is advisable to supplement the rules of Art. 22 of the Law of Ukraine "On Public-Private Partnership").

The last proposal will avoid the problems of duplication of purpose of investment projects in different ministries and regions, financing of "toxic" investment projects, increase of number of investment projects through "repackaging" of timely unfinished projects of past years in new, insufficient awareness of the society.

Analysis of the legal mechanism of public-private partnership provides an opportunity to identify steps to enhance the potential of cooperation between the state and business, in particular, banks, namely: improving the legislation by amending the legal framework of the public-private partnership (adoption of a single legislative act in the field of public - banking partnership, minimizing the number of conciliation procedures, etc.); identification of the bodies empowered to manage the establishment of state-banking partnerships at the regional and local level, the definition of their functions, powers and degree of responsibility; maximum simplification of participation in the competition of a private partner (reduction of regulatory procedures, implementation of technical issues regarding the conclusion of contracts by relevant departments of authorities); creation of institutional public-private partnerships and development of cluster forms of cooperation; operational control over the fulfillment of obligations by public-private partnerships by the public.

The adoption of the above proposals will increase the effectiveness of the legal mechanism for securing public-private (public-banking) partnership and will facilitate the efficiency of project implementation through the use of various forms of public-bank partnership, which will have positive socio-economic consequences (creation of additional jobs, increase the income of different budgets levels, infrastructure development, provision of services to the population, etc.).

Therefore, legal mechanisms of functioning and regulation of spheres of public-private partnership projects play an important role in establishing trust in the state, local self-government bodies, and protection of the private sector. The current legislative and regulatory framework is not fully in line with economic realities, unable to respond dynamically to the needs of the public and private (banking) sectors, which is a consequence of the lack of proper institutions in the country.

3. Conclusions

In order to involve the banking sector in participating in state projects, Ukrainian legislation needs further improvement. In our opinion, the primary plan of change takes the following form: amending the legislation on public-private partnership with a view to its uniform application and interpretation; introduction of a unified procedure for all types of public-private partnership contracts; development of an authorized state body responsible for the development of state-banking partnership in Ukraine; strengthening the functions of local self-government bodies in the sphere of state-banking partnership; introduction of transparent competitive procedure for selection of private partners in the framework of public-private partnership projects through the creation of an independent electronic public platform; a clear division of functions between the relevant public authorities regarding the implementation of state-bank partnership projects; ensuring equal distribution of risks between the state and the private partner in the conditions of public-private partnership implementation by amending the legislation of Ukraine; introduction of a single model contract of public-private partnership.

The existing regulatory framework for the regulation of public-private partnerships requires the revision and unification of provisions, which would eliminate their divergence and introduce uniform clear rules for the development of public-private partnerships. It would be advisable to formulate a framework law in the sphere of regulation of state-banking partnership, which would allow to take into account the sectoral specificity of various kinds of by-laws of ministries and departments.

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