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ANALYSIS OF THE STATE OF LEGAL REGULATION OF INVESTMENT ACTIVITY IN UKRAINE

The research is devoted to the study of the state of legal regulation of investment activity in Ukraine. The author analyzed the current investment legislation and pointed out the existing problems in the legal regulation of investment activity. It is established that the investment legislation of Ukraine needs to be improved according to the current state of investment activity.

Keywords: investment, investment activity, legal regulation, social impact, environmental effect.

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АНАЛІЗ СТАНУ ПРАВОВОГО РЕГУЛЮВАННЯ ІНВЕСТИЦІЙНОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Наукова робота присвячена дослідженню стану правового регулювання інвестиційної діяльності в Україні. Автор проаналізував чинне інвестиційне законодавство та вказав на існуючі проблеми у правовому регулюванні інвестиційної діяльності. Встановлено, що інвестиційне законодавство України потребує удосконалення відповідно до сучасного стану інвестиційної діяльності.

Ключові слова: інвестиції, інвестиційна діяльність, правове регулювання, соціальний ефект, екологічний ефект.

The modern and post-war development of economic processes in Ukraine cannot be imagined without proper legal regulation of certain types of economic activity. Proper legal regulation of investment activity is no exception. Today, at a rather difficult time for Ukraine, there is an urgent need to attract investment. National investors are not able to cover all existing investment needs, and foreign investors are

unwilling to take risks because they do not have sufficient guarantees of investment protection.

The regulatory framework for the legal regulation of investment activity has been established, but it has significant shortcomings. Thus, today there is a need to analyze the current state of legal regulation of investment activity in order to identify existing shortcomings of legal regulation. Of course, it is impossible to disclose all the problems of investment activity regulation in one publication, but the author will try to point out some problems.

The basic legal act regulating investment activity is the Law of Ukraine "On Investment Activity" [1], which defines the general legal, economic and social conditions for investment activity in Ukraine. The official web portal of the Parliament of Ukraine "Legislation of Ukraine" indicates 423 related documents to the Law of Ukraine "On Investment Activity" as of June 2024, which indicates a fairly wide range of sources of legal regulation of investment relations [2]. However, this number of sources is not a sign that characterizes proper legal regulation of investment relations, but rather indicates a lack of systematization and a clear structure in investment legislation. Often, the provisions of laws and codes are duplicated, contain different definitions, and lack terminology, which complicates law enforcement. Thus, it can be argued that investment legislation needs to be systematized, and this can be done by "revising" and "cleaning" the legislation, bringing it in line with the current realities of social relations.

The analysis of the investment legislation of Ukraine gives grounds to point out the following shortcomings of legal regulation:

1. In defining the concept of "investment" in Article 1 of the Law of Ukraine "On Investment Activity", the legislator states that the purpose of investment is to create profit and/or achieve social and environmental effects. However, neither the Law of Ukraine "On Investment Activity" nor any other regulatory act defines the content of the concepts of "social impact" and "environmental effect". The Law of Ukraine "On the Regime of Foreign Investment" [3], in defining the concept of "foreign investment" as the result of investment disposal, mentions profit or achievement of a social impact.

A strange situation arises, since the term "investment" has a general definition for all types of investments (investments placed by national or foreign investors), but such a feature as environmental effect is mentioned only in the Law of Ukraine "On Investment Activity".

The indication of such a feature as the social impact of investment activity is enshrined in the Law of Ukraine "On Investment Activity" in Article 3 when defining the concept of "innovation activity" and in Part 3 of Article 2, which contains a requirement for an investment project in which, among other requirements, the legislator indicates the availability of a forecast of economic and social impact from the implementation of the investment project. It is also worth paying attention to other legal acts regulating investment activity, which also contain an indication of the presence of social impact in investment activity. In particular, this is Article 1 of the Law of Ukraine "On the Regime of Foreign Investment" [3] and Article 1 of the Law of Ukraine "On Foreign Economic Activity" [4], which define the concept of foreign investment. Although the term "social impact" is not a legal category, its disclosure and consolidation in the Law of Ukraine "On Investment Activity" is important, since the social impact is a characteristic feature of investment and the result of investment disposal. We believe that the social impact can be considered neither the main goal nor an additional goal of investment activity. The same applies to the term "environmental effect". The environmental effect is also a feature of investment and the result of investment disposal, but there is no definition of the content of this concept in Ukrainian legislation.

2. The Commercial Code of Ukraine (hereinafter referred to as the CC of Ukraine) [5] duplicates the provisions of the Law of Ukraine "On Investment Activity", in particular, the definition of the concept of "investment". It is also worth noting that Article 326 of the CC of Ukraine defines the concept of "investment" through long-term investments, which is a fundamental mistake, since investments can also be made in the short and medium term. The CC of Ukraine also lacks a clear explanation of the category of "long-term investments". The CC of Ukraine duplicates the Law of Ukraine "On the Regime of Foreign Investment" in terms of the concept of "enterprise with

foreign investments" and the concept of "foreign investments" (Article 116 of the Commercial Code of Ukraine).

3. An investment agreement is the most common form of securing the rights and obligations of investment entities. The Law of Ukraine "On Investment Activity" stipulates that the basic legal document, which shall regulate mutual relations of subjects of the investment activity is a contract (agreement) or a securities prospectus (decision to issue securities) (Article 9 of the Law of Ukraine "On Investment Activity"). Unfortunately, however, investment agreements do not have sufficient legal support at the legislative level, as investment legislation does not define the concept of an investment agreement, its features and classification.

4. The Law of Ukraine "On State Support of Investment Projects with Significant Investments" [6] enshrines the contractual structure "special investment agreement" as a novelty of investment legislation, and this raises the question of the correctness of the name of the contractual structure "special investment agreement", since the legislation does not contain a definition of the content of the basic concept of "investment agreement" [7, p. 56]. In addition, questions arise regarding the peculiarities of conclusion, execution, termination of a special investment agreement and the liability of the parties for improper performance of contractual relations; fourthly, regarding the scope of subjective rights and legal obligations of the parties to contractual relations, since the Law of Ukraine "On State Support of Investment Projects with Significant Investments" does not reflect the rights and obligations of the parties to a special investment agreement.

It is also worth noting that the Law of Ukraine "On State Support of Investment Projects with Significant Investments in Ukraine" defines a new subject of investment activity – an investor with significant investments, but the legal status of an investor with significant investments also raises many questions. The Law of Ukraine "On State Support of Investment Projects with Significant Investments" only partially defines its legal status [8]. The Law of Ukraine "On Investment Activity" and other legislative acts did not define such a category of investment entities.

5. Since 2020, Ukraine has begun to develop legislation on the legal regulation of

green bonds [9], which are a financial instrument for green investment in accordance with European standards, but the Law of Ukraine "On Investment Activity" does not contain provisions that would regulate legal relations related to green investment.

6. The Law of Ukraine "On the Regime of Foreign Investment" has a significant impact on the regulation of investment relations. Norms on the protection of foreign investments are contained in the Law of Ukraine "On Protection of Foreign Investments in Ukraine" [10], but this law does not contain an effective mechanism for protecting foreign investments and does not meet the realities of today's issues of foreign investment protection. Currently, there is a need to revise the Law of Ukraine "On the Regime of Foreign Investment" and the Law of Ukraine "On the Protection of Foreign Investments in Ukraine" in order to amend the provisions on guaranteeing and ensuring the rights of foreign investors.

Thus, the investment legislation of Ukraine is quite extensive and lacks a clear system. One of the negative aspects of the investment legislation is that the provisions of laws and codes are duplicated, contain different definitions, and do not define the terms mentioned in the legal act, which complicates law enforcement. Under such circumstances, Ukraine's investment potential will not be attractive. Thus, it can be argued that investment legislation needs to be systematized, and this can be done by "revising" or "cleaning" the legislation, bringing it in line with the current realities of social relations.

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