

Foreign experience of legal regulation of contractual forms of public-private partnership and the possibility of its implementation in Ukraine

The formation of a market economy is largely determined by the degree of interaction between the state and business. The nature of this interaction, methods and specific forms determine the level of development of market relations. Meanwhile, the state as a regulator, as before, retains responsibility for the performance of socially significant functions, the only difference being that the role of the private sector - a source of innovative development of the economy - is growing. In recent decades, a very special quality of interaction between the state and business, the so-called partnership, has been developing in the economies of a number of developed countries.

Public-private partnership is the main link that connects the interests of the state, business and society, allowing to implement socially significant projects, including the formation of an innovative model of economic development. However, today there is no clear generally accepted understanding in defining the concept of public-private partnership, just as there is no consensus among specialists about what forms of interaction between government and business can be attributed to PPP. The development of partnership relations between the state and business today plays an important role in increasing not only the effective functioning of enterprises, but also the socio-economic development of the state as a whole. Thanks to such development, it becomes possible to attract additional resources, i.e. investments, to the public sector of the economy. Such relations contribute to increasing the efficiency of using available resources, distributing risks between the public and private sectors and minimizing them by combining the resources and potentials of the state and business. For this purpose, we consider focusing on the analysis of the theoretical foundations for defining the concept of "public-legal partnership". In their work, K. V. Pavlyuk and S. M. Pavlyuk express the opinion that "the interpretation of the concept of public-private partnership includes constructive interaction of the state, civil institutions, the private sector in political, economic, humanitarian, social and other spheres of social activity" [1, p. 11]. It should be noted that some researchers define public-private partnership as cooperation. Thus, in his work, Yashchyshak, O. interprets public-private partnership as a system of cooperation in which risks are distributed between partners according to the principle of the best ability to neutralize them, and there is also a coordinated approach to the division of rewards [2].

Scientists Y. S. Zaloznova , I. P. Petrova and N. V. Trushkina define the concept of "public-private partnership" as "long-term mutually beneficial cooperation between the private sector and the state, which is based on the combination of competencies, resources, risk sharing and compliance with the economic interests of partners. This provides the private partner with additional opportunities to receive guaranteed profits and increase competitiveness, and the state with additional opportunities to implement socio-economic policy, increase the efficiency of its activities, fulfill its tasks, and provide services to meet social needs" [3, p. 96]. O. Sidunyak interprets public-private partnership as mutually beneficial cooperation, in which the efforts of both the state, business and society

as a whole are combined for the further development of the social sphere [4, p. 65–66]. A similar statement is supported by R. A. Kucher, who believes that “public-private partnership is one of the most effective forms of cooperation between the state and business, such cooperation is based on the recognition of the fact that both parties benefit from the combination of financial resources, technologies and managerial knowledge in order to improve the quality of services provided to citizens” [5, p. 258]. Also, foreign researchers H. Van Hem and Y. Kopenyan interpret “public-private partnership as long-term cooperation between the public and private sectors, within the framework of which they jointly develop a product or services, share the risks, costs and resources associated with these products or services” [6, p. 593]. We support this kind of statement, because most scientists highlight the features of public-private partnership as a unique institution of interaction between the public and private partner. These relationships create additional opportunities for the private partner to receive guaranteed profits and increase competitiveness, and for the state - to implement socioeconomic policy, increase the efficiency of its activities, fulfill its tasks, provide services to meet public needs. Another group of scientists speaks of an agreement or contract between the state and private individuals. Thus, R. B. Polyakov proposes to define public-private partnership as “a type of long-term contractual cooperation between the state or state institutions and a private individual, which is associated with the provision of public services by a private individual, while the risks are shared between the two parties” [7, pp. 183–184]. E. H. Klein and G. R. Theisman consider “public-private partnership as a sustainable interaction between the public and private sectors, during which a joint product and / or services are developed, and risks, costs and profits are distributed” [8, p. 85].

That is, public-private partnership is, so to speak, a harmonious duet of the state and business, which is created on a long-term and mutually beneficial basis and is formed by synthesizing the material and intangible resources of society and the private sector in order to improve the quality of life of society. This feature is primarily associated with the role of the state and other subjects of public law in partnership relations. In the civilized understanding of this concept, partners are those who act together to achieve a single result.

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