

ADAPTATION OF FOREIGN LEGAL MODELS OF CONTRACTUAL PUBLIC-PRIVATE PARTNERSHIP TO UKRAINIAN LEGISLATION

For more than a decade, the financing of public sector enterprises has been actively developing through the institution of public-private partnership (PPP). The need for public-private partnership is due to the lack of budget funds, the need to modernize infrastructure and increase the efficiency of public services. However, to date, a clear understanding of the concept of "public-private partnership" has not been developed, which determines the relevance of the research topic.

Thus, I. Zapatrina and T. Lebeda "consider the interaction of the state and the private sector to solve socially important problems (tasks) in the interests of society as a whole or a separate territorial community" [1, p. 57]. Also, Yashchyshak, O. identifies "civil hypostases of partnership in the form of a special legal form of relations between persons (contract - partnership - legal entity) and a special essential connection within these relations, built on trust" [2, p. 25].

That is, as for the relations of public-private partnership, in which one party is the state or another public entity, the special connection is characterized by the equality of the parties to each other, which is inherent in civil law, and not only by the equality of the subjects of the partnership before the law. The free expression of will or initiative of the partnership, the establishment of trust relations, freedom of contract, official and unofficial agreements are also peculiarities.

It is worth noting that the norms of the Civil Code of Ukraine ensure the interaction of partners within the framework of public-private partnership, since they regulate the issues of management of joint assets, protection of the rights of participants, property and investment activities. Also, important norms of this codified act are the provisions on obligations, which are basic for regulating relations within the framework of contractual forms of partnership, such as concessions or facility management. That is, the Civil Code of Ukraine creates a legal basis within the framework of public-private cooperation to ensure stability and protect the interests of the parties.

Thus, it can be noted that all these approaches highlight different aspects of public-private partnership, and therefore only their combination can provide a holistic understanding of this phenomenon. Most researchers working on the study of public-private partnership issues tend to put forward different considerations regarding the development of the concept of public-private partnership.

It is also worth noting that the definition of the concept of public-private partnership is also enshrined in the Law of Ukraine "On Public-Private Partnership" dated 01.07. 2010 No. 2404-VI, according to which "public-private partnership is interpreted as cooperation between the state of Ukraine, the Autonomous Republic of Crimea, territorial communities represented by relevant state bodies, which, on the basis of the Law of Ukraine "On Management of State Property Objects", manage state property objects, local governments, the National Academy of Sciences of Ukraine, national sectoral academies of sciences (state partners) and legal entities, except state and municipal enterprises, institutions, organizations (private partners), which is carried out on the basis of a contract in the manner established by this Law and other legislative acts, and meets the characteristics of public-private partnership

defined by this Law” [3].

Public-private partnership (PPP) is currently the most common tool for implementing infrastructure projects. In this regard, we share the opinion of S. V. Tereshchenko that “the mechanism of public-private partnership provides significant advantages in reducing public spending on the reconstruction of destroyed infrastructure and its further maintenance. Due to the existing material, technical and other needs of Ukraine, it is advisable to conduct a fundamental legal study of the reform potential of public-private partnership as a mechanism for activating relevant modernization processes in Ukraine. In this context, it is considered an important tool for long-term structural development of infrastructure and strategic services” [4, p. 212].

Thus, public-private partnership is a legally legalized, organizationally built system of relations between the state and business for the purpose of implementing

joint projects on mutually beneficial terms. That is, public-private partnership is a legally enshrined in a special agreement mechanism for joint activities of a public and private partner, the main goal of which is to improve the quality and accessibility of public goods, works and services by attracting private financing and using private intellectual and managerial experience; the main features of which are long-term, fair risk sharing, combining various (material and intangible) resources of partners and economic efficiency. The variety of forms, mechanisms and areas of application of public-private partnership make it a universal tool for solving a number of long-term tasks. These tasks range from the creation and development of infrastructure to the development and implementation of new promising technologies and types of services.

1. References

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