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**Yu. I. OSTAPENKO**

PhD. (Legal Sciences),

assistant lecturer of the Economic Law

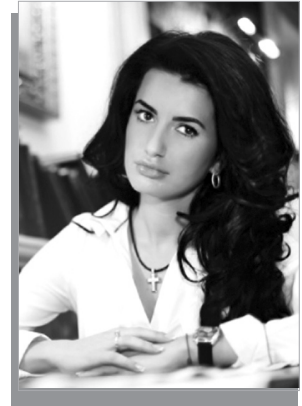
Department,

Yaroslav Mudryi National Law University,

Ukraine, Kharkiv

e-mail: julost1111@ukr.net

ORCID: <http://orcid.org/0000-0002-4033-5927>



## **A PROBLEM OF MODERNIZATION OF THE CURRENT INVESTMENT LEGISLATION AND LEGISLATION ON INNOVATIONS OF UKRAINE UNDER CONTEMPORARY CONDITIONS<sup>1</sup>**

The article takes notice of the absence of a systematized approach to legislative support in the innovative and investment sectors of the economy. Systematization of the corresponding legal basis, the quality, and detailing concerned with application of certain legal means in a regulatory mechanism of legislative institutions on investments and innovations have led to a higher level of economic development. Thus, the author highlights a matter regarding conceptual approaches to amendment and modernization of the corresponding legislative institutions and ascertainment of necessary methods for fostering respective legislative processes.

**Key words:** investment legislation, legislation on innovations, public-private partnership, codification of investment legislation, codification of legislation on innovations.

**Problem setting.** The permanent crisis has been observed in Ukraine over the last eight – ten years. The crisis transforms from economic to political one, then to legislative, and afterwards to a more profound economic and socio-cultural crisis. At the same time, the crisis always affects a human factor,

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increasing tensions in the society and the continuous cyclical nature of respective processes.

The turbulent post-crisis world, especially in difficult political times on open spaces of our country, had led to degradation of a majority of important social institutions in Ukraine that worsened the situation concerning providing basic rights and liberties of a human and citizen. Hence, it is worth mentioning that durable neglecting a need for social transformations required by challenges of the presence has endangered the sovereignty of our country and its economic stability. Nowadays, the society makes attempts of radical renovation through a system breakage, hoping to create a new competitive mechanism, which would adhere to contemporary European realities. Unfortunately, this mechanism is spontaneous (at certain institutions). This fact leads to a greater escalation because the economy is a single mechanism, renovation of which primarily requires system, scientific and methodological approaches to formation of economic conceptions for legislative frameworks of an economic system entirely rather than for a particular institution.

Formation and inopportune application of some or other legislative acts within corresponding economic sectors are the main problem for Ukraine in the process of fight against consequences of all the economic crises. This process is fully justified because only legal means provide conditions for normal development of the market economy and market relations, fair distribution (redistribution) of incomes between various segments of a population, countries through a taxation system, state and European budgets, and special social programs. That is why each country develop and undertake an economic (industrial, agricultural) policy that means system application of legal means of the influence on behavior of participators of economic relations, particularly economic entities, local communities, employees, investors, consumers, etc. Thus, there is a need to carry out legal unification of a range of multi-sectoral legal instruments now more than ever. Law may foster as well as restrain development of economic relations. Sometimes, it becomes an inevitable obstacle for functioning of a certain industry. That is to say, the legislature should perform legislative modelling different economic sectors being adequate to modern realities.

**Analysis of recent research and publications.** Legislative support of legislation on innovations and investment legislation has been subject to research in scientific papers of economists such as Budarna (2017), Zadykhailo (2012), Kudriavtseva (2010), Sheverdina (2012), et al. Nevertheless, this theme is of particular significance because issues of the appropriate normative content and systematization of legislation have not been considered yet. Eventually, a considerable amount of scientific papers concerning these two directions enables to form a universal theoretical matrix for corresponding research. It is important for new scientific and

theoretical results as well as the increase of quality of legislative reformation in these sectors of the economy.

**Paper objective.** A purpose of this article is to analyze the current state of the investment legislation and legislation on innovations of Ukraine and to form conceptual approaches to further amendment and modernization of the legislation.

**The main material presentation.** Processes of integration and globalization of the world economy encourage an investment component to be of decisive significance in formation and development of the domestic economy now. This requires establishing an exact mechanism of legislative support, i.e. considerable renovation of legislative regulation. To spur the growth of investment activity, the government should accomplish the following goals: formation and undertaking an exact investment policy; support of enabling business climate in the country; development of investment and infrastructure support of investment processes.

The Law of Ukraine «On Investment Activity» and the Law of Ukraine «On Protection of Foreign Investments in Ukraine» accepted in 1991 constitute a basis for legislation regulating the corresponding scope of relations. In addition, certain statements of codes (Economic, Tax, Civil and Land Codes) and a set of special laws of Ukraine («On the Regime of Foreign Investments», «On Foreign Economic Activity», «On Banks and Banking», «On General Frameworks of Creation and Functioning of Special (Free) Economic Zones», «On Application of Special Measures regarding Import in Ukraine», etc.) are belonged to the investment legislation.

Having analyzed the current investment legislation, the author concludes that a wide range of laws regulates investment processes. Functioning of the national investment regime is also a distinction (Ivanova, 2014). That is to say, there is the national regime for foreign investors in Ukraine regulated by a large number of legislative acts. Public law, particularly administrative acts and instructions of public agencies, underlie legislative regulation of foreign investing (Muzychenko, 2005). Carrying out their activities, investors have to follow certain acts of the country. The thing is that the bodies of public authority usually unilaterally approve and amend rules contemplated by administrative acts and instructions. Sometimes, they contain requirements, which do not act in favor of an investor. This leads to some concerns about consistency of conditions for activity in a foreign investor's country. Obviously, stability, which ensures an opportunity to prognosticate a period and terms of recovery of investments, is the main term for an investor. Therefore, an investor should spare himself negative consequences, including extra profit for reimbursement of risks caused by instability of the legislation. It is an essential requirement for signing serious contracts, which contains projects with a long-term period of recovery (Krainiukova & Kaminskyi, 2009).

Taking into account the contemporary state of legal enactment and specificity of foreign investments, the author focuses on the necessity of further modernization of the legislation in this field. This process should occur simultaneously in several directions: the legislation for foreign investors should contemplate the national regime of activity; a primary objective may consist in rejection of application of a caution «unless otherwise provided by law» (the legislature had to give clear exceptions to a normative act); there is a need to enact legal measures for protection of investments. An issue regarding the increase of guarantees, namely those concerned with protection of investment against non-commercial risks through legal enacting of the subrogation principle (Sheverdina, 2012).

A need for development and implementation of a mechanism for the increase of investment amounts by commercial banks through long-term loans is also of considerable importance. Nevertheless, there are some circumstances related to long-term loans in Ukraine, when a bank should reorient credit resources mainly towards long-term crediting competitive and prospective productions. This will lead to the decrease of an inflation effect.

To provide protection of investors' rights, the author proposes to continue formation of an integral mechanism, which provides functioning of the security market, and to increase the role of stock exchange in development of investment resources. Commercial banks should boost an amount of investments in the real sector of the economy and implement a flexible procedure for acceptance of requirements of the National Bank of Ukraine regarding funds directed by commercial banks towards long-term crediting innovative projects.

A system of issuing permits remains problematic. As a result, it needs reformation. To attain this objective, the legislature should finish inventorization of all the permitting documents issued for economic entities, generalize a list of permitting documents and determine inexpedient documents or documents, which have not been approved by laws of Ukraine and initiate legislative determination of a list of activities, which have to be licensed (Budarna, 2017).

Nevertheless, it is worth mentioning that foundation of an institution of public-private partnership (PPP) is one of the most interesting challenges of modern embodiment of investment relations. This institution encourages joining efforts on the part of public authorities, local self-governing and business communities in accomplishing goals for meeting demands of the population for a wide range of services. Consequently, the corresponding activity as a phenomenon requires a complex of measures, which exceed the bounds of competencies and financial opportunities of the public and private sectors. Obviously, the partnership of power and business becomes a way used by a government to enhance performing their obligations to the people as well as one of methods for providing accomplishment of goals of development in favor of the society and a means for

reformation of public administration in conformity with the concept of «government-partner».

Public-private partnership (PPP) is a key mechanism of economic modernization. High efficiency of PPP has been proven in many countries of the world. The author indicates the main priorities of PPP compared to traditional projects of public sector, which are as follows: public authorities and local communities may use experience and efficiency being inherent to a private sector in order to reduce expenses and enhance services' quality; under conditions of PPP, an instrument for involvement of additional investment appears; a part of staff is freed up to be involved in solving other important problems of a city; an optimal price is guaranteed; PPP attract innovations; there is a strong possibility of better managing public and municipal assets under conditions of corresponding preparation and monitoring PPP. According to the Ukrainian legislation, public partner possesses the right to property, which is related to objects completed or reconstructed owing to public-private partnership. Impossibility to privatize objects of public-private partnership during an entire period of public-private partnership is a distinctive feature (Pavliuk & Liapin, n.d.).

In spite of all the advantages, complexity and an inconsiderable number of successful projects increases the necessity of further research. A term «public-private partnership» is considered in the broad and narrow senses. On the one hand, PPP is referred to as long-term collaboration between a government and a private sector regulated on a contractual basis, which aims at achievement of social goals and encompass all phases from planning to exploitation together with technical servicing (Zadykhailo, 2012). In the broad sense, a term of «public-private partnership» combines all the forms of cooperation between a government and a private sector in order to solve problems being under responsibility of a government.

Considering the broad sense of this term, the author concludes that this definition is of very little use from a practical perspective because there are very many forms of collaboration between a government and business regulated by various normative acts. According to the legislation of Ukraine, namely the Law of Ukraine «On Public-Private Partnership» (thereinafter – the Law) and the Decrees of the Cabinet of Ministers of Ukraine «On Approving of the Procedure of Providing Government Support to Public-Private Partnership» of March 17, 2011, No. 279 and «Some Issues of Organizing Public-Private Partnership» of April 11, 2011, No. 384, public-private partnership is collaboration between the government of Ukraine, the Autonomous Republic of Crimea, local communities represented by respective public authorities, bodies of local self-governance (public partners) and legal entities, except publicly owned and municipal enterprises, or physical persons-entrepreneurs (private partners), which occurs on a contractual basis in conformity with a procedure established by the Law of Ukraine «On Public-Private Partnership». This law determines the following requirements: public-private partnership has to

provide higher technical and economic figures of efficiency of activity for the country than in case of conducting such activity by a government partner without involvement of a private partner; durability of relations (from 5 to 50 years); transferring a part of risks to a private partner in the process of public-private partnership; a private partner invests in investment objects from sources permitted by the legislation.

Nowadays, one pole of the world economy produces technologies and innovative products and another one produces real commodities on a basis of these technologies (Karyi, 2015). Ukraine is equidistant from these poles and uncompetitive due to inappropriate quality of its products, including own innovative products supplied to a market. At the same time, Ukraine is unable to sustain price competition in markets of traditional commodities presenting the V–VI technological paradigms. Certainly, it is difficult to solve this problem, using the current legislative basis. Nevertheless, there is one more urgent need concerned with practical implementation and amending statements of the Law of Ukraine «On Public-Private Partnership», which consists in organizing trilateral collaboration of the government, bodies of local self-governance and economic entities (or groups of these objects). This partnership forms a larger amount of guarantees related to proper fulfillment of obligations assumed by its participators. Hence, there is an urgent need for reconsideration of the corresponding legislation and implementation of the indicated amendments. Thus, the above-mentioned facts proves that development of an integral and stable legal frameworks based on suggestions revealed in this article are one of the main requirements for enhancement of investment climate and the increase of amounts of foreign investment in the economy of Ukraine. Certainly, a considerable number of legislative acts will hardly solve problems related to effective investment regulation of the investment institution. Hence, the Investment code of Ukraine, which will strictly determine «monotony» of investment reforms, should constitute the basis of legislation for solving modern turbulent investment problems (Kudriavtseva, 2010).

Consequently, innovative activity, especially if the society supports prior directions of development of socio-economic spheres in the country, is one of economic and legal forms of investing. The government should maximally adjust and integrate the national economic system into the system of the EU member countries. However, this process makes Ukraine to face the choice of implementation of the model taken by the EU as a basis, i.e. the model of innovative development.

Obviously, providing innovative development of economic relations as the main factors of maintaining competitiveness of the national economic entities and the national economy should be referred to as an independent function of the government in the economic sphere. Firstly, a system of continuous implementation of innovation in production, the permanent growth of innovative products is a problem affecting



almost all types of production, markets of almost all the major types of goods and services. Secondly, items of industrial property and especially items in the form of a finished product (innovative products) in turn form an own independent market of innovative products. In the field of economic relations, particularly production, innovative relations becomes a component, which is factually an essential condition for functioning of production. Therefore, innovative relations as a component of economic relations comprehensively pervade markets of various goods and services.

Taking into consideration such role of innovative relations in the system of economic relations, they become excessively essential subject to influence from the government. Influencing activeness, quality and the scale of innovative relations, the government gains an opportunity to cause the multiplier effect. A general technological level of the economy, i.e. competitiveness, particularly its effectiveness and potential to grow, increases owing to intensification of innovative relations. That is why a necessity for ensuring a reproductive innovative cycle on a new technological basis, the social orientation of this reproductive cycle accompanied by maximally efficient usage of the innovation potential, internal and external resources and achievement of higher rates of dynamics of development compared with leading world countries in accordance with a direction of the global economic progress are the most important requirements to a way and rates of the economic growth after overcoming the crisis state of the economy. Thus, such requirements will allow providing competitiveness of the Ukrainian economy and entering a trajectory of sustainable development in a proper way in the process of establishment of an innovative model for economic development. As a result, this approach becomes a primary goal of the government policy, which, above all, results in formation of effective legal regulation of relations in the sphere of innovations.

According to the Global Innovation Index, Ukraine has achieved a goal set by the government (ranks the 50<sup>th</sup> place). In 2016, a number of innovations in innovative companies increased by 32%. Ukrainian companies involved more than 400 million USD. However, indices of institutional development (the 106<sup>th</sup> place as in 2016) and infrastructure development (the 90<sup>th</sup> place) are low because of political instability and inconsistency of undertaking reforms. It is a pity that the legislative basis and methods of governmental support of innovative development are not perfect. Although a considerably high level of research and patenting activity is necessary, but not sufficient, standings of Ukraine by a level of commercialization and protection of objects of intellectual property are low. To transform scientific and technical achievements into a competitive scientific and technical product, there is a need for development of infrastructure of the intellectual property market and completion of formation of the national system of innovations.

Assessing efficiency of the national system of innovations in the field of resource provision of the science and innovative activity, the author identifies strengths and

weaknesses. Particularly, the strengths include preservation of human potential for building an economy of knowledge (educated and qualified young staff). The weaknesses include isolation of the country's scientific system, its insufficient integration into the international scientific community, underfunding the science and archaic organizational structure (Kanaieva, 2006). Thus, to develop the national system of innovations in Ukraine, the author proposes to create an effective institutional environment based on the corresponding innovative policy. In turn, this policy should contain the main factors concerned with innovative potential and innovative development of the country. In addition, these factors should be anthropological, demographic, socio-psychological, institutional, economic, normative and legal, political, managerial, etc. (Androshchuk, 2004).

The contemporary normative and legal basis (laws, decrees of the President, secondary acts in the form of resolutions of the Government, decrees of central bodies of executive power, et al.) regarding scientific, technical and innovative activity encompasses approximately 200 documents. Particularly, the national legislation on innovations includes norms of the Constitution of Ukraine, the Economic Code of Ukraine, the Law of Ukraine «On Innovative Activity» of July 4, 2002, No. 40-IV, the Law of Ukraine «On Prior Direction of Development of Innovative Activity in Ukraine» of December 5, 2012, No. 5460-17, the Law of Ukraine «On Innovative Activity» of September 18, 1991, No. 1560-XII, the Law of Ukraine «On Scientific and Scientific-Technical Activities» of November 26, 2015, No. 848-VIII, the Law of Ukraine «On the Special Regime of Innovative Activity of Technology Parks» of July 16, 1999, No. 991-XIV, et al., which determine legal, economic and organizational frameworks of government regulation of innovative activity in Ukraine, establish forms of stimulation of innovative processes and aim at support of innovative development of the economy. Thus, institutional and legal mechanisms, particularly creation of the corresponding legal field for efficient innovative activity and formation of the corresponding system of bodies of public administration, which would make the regulatory influence on entities of innovative activity, is a considerably important means of influence on innovative activity. According to the Law of Ukraine «On Innovative Activity», the government regulates the activity through determination and support of prior directions of innovative activity of state, sectoral, regional and local levels. Nevertheless, medium-term priorities of innovative activity, which are determined in Article 8 of the Law of Ukraine «On Prior Direction of Development of Innovative Activity in Ukraine», become irrelevant because they were valid until 2007. In addition, a mechanism for formation and approving medium-term priorities of innovative activity, which is enshrined in Article 4, does not work. The Verkhovna Rada of Ukraine has not supported numerous attempts to amend the mentioned law or to substitute another law. For instance, the recent project of the Law «On



Amendment of Certain Laws of Ukraine regarding Prior Directions of Innovative Activity» of November 4, 2010, No. 7333, has been sent for revision because it is not conform with requirements of legislative techniques and may lead to appearance of collisions in the legislation.

There is a need for harmonization of legislative acts regarding determination of a development strategy. Bringing into force the Law of Ukraine «On the General State Complex Program of Development of High Science-intensive Technologies» contemplates the following changes in structure of the industrial complex by technological paradigms: output of the V technological paradigm will grow from 5% to 12% until 2013; output of the VI technological paradigm will grow from 1% to 3%. As can be seen, this program aims at undertaking a strategy of catching-up development that enshrines diversity of the Ukrainian economy. In contrast, the Strategy of Socio-economic Development of Ukraine «On the Way to European Integration» for 2004–2015 contemplates undertaking a strategy of an «innovative breakthrough» based on acceleration of the scientific and technological progress, formation of new generations of techniques and technologies, moving towards postindustrial development. These steps are stipulated by prior goals of the strategy of structural transformations (Androshchuk, 2017).

Formation of organizational structure, which develop and maintain implementation of the government policy regarding innovative activity as well as determines and empowers a special authorized body of public power in this field, is one more important factor that influences conducting innovative activity in Ukraine. It is worth mentioning that frequent changes in organizational structure of public administration of innovative activity may lead to a positive effect, which consists in reduction of administrative functions and costs for maintaining managerial staff, as well as negative one, which consists in insubordination in the mentioned field and the loss of resistance of the managerial system to external impacts. Hence, discoordination of the very multi-functional infrastructural innovative institutions and discoordination of government regulation of the latter, beginning with the legislative level, lead to the absence of an innovative market model. Consequently, creation of the corresponding model and enshrinement of it in the codified act such as the Code of Ukraine on Innovations are prior goals of the legislature. Thus, using an example of several economic sectors, namely within the context of legislative modelling, it is expedient to summarize that economic legislation should be formed according to a principle of systematization, or rather codification with regard to prior economic directions and be grounded on the basic code, which describes each existing economic direction.

**Conclusions.** 1. Further development of the investment legislation and legislation on innovations oriented towards real encouragement of the respective economic processes should contemplate conceptual modernization of the content and structure of normative acts of subfield of the economic law related to investments and innovations.

2. Awareness of the system nature of these relations organized in the market form should underlie such modernization. In other words, the legislature should structure normative terms in accordance to topography of organizing the investment and innovation markets, particularly a market commodity, accumulation of market potential, supply, demand, infrastructure, balance, means of government regulation, forms of existence, etc.

3. Obviously, such structuring corresponds with an issue of codification of the respective subfields of the legislation. Systematization of norms within these subfields should adhere to structure of the mentioned markets.

4. A problem of formation of necessary investment and innovation climates in the country, which would foster the mentioned processes, is not limited to the state of the investment legislation and legislation on innovations. Nevertheless, legislative regulation is the most powerful factor of socio-economic transformations. Hence, it requires creation of models for optimization of legislative activity in the investment and innovation fields.

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**Ю. И. ОСТАПЕНКО**

кандидат юридических наук, ассистент кафедры хозяйственного права Национального юридического университета имени Ярослава Мудрого, Украина, г. Харьков

**ПРОБЛЕМА МОДЕРНИЗАЦИИ ДЕЙСТВУЮЩЕГО  
ИНВЕСТИЦИОННОГО И ИННОВАЦИОННОГО  
ЗАКОНОДАТЕЛЬСТВА УКРАИНЫ В СОВРЕМЕННЫХ  
УСЛОВИЯХ**

В статье исследуется существующий механизм законодательного обеспечения двух хозяйственно-правовых институтов – инвестиционного и инновационного. Определяются необходимые шаги в реформировании и усовершенствовании законодательной системы последних, а также иллюстрируется необходимая законодательная модель каждого из соответствующих хозяйственно-правовых институтов и устанавливается методологический подход к законотворческой деятельности путем систематизационных процессов, а именно кодификации действующего инвестиционного и инновационного законодательства.

**Ключевые слова:** инвестиционное законодательство, инновационное законодательство, государственное частное партнерство, кодификация инновационного законодательства, кодификация инвестиционного законодательства.

## **Ю. І. ОСТАПЕНКО**

кандидат юридичних наук, асистент кафедри господарського права Національного юридичного університету імені Ярослава Мудрого, Україна, м. Харків

# **ПРОБЛЕМА МОДЕРНІЗАЦІЇ ЧИННОГО ІНВЕСТИЦІЙНОГО ТА ІННОВАЦІЙНОГО ЗАКОНОДАВСТВА УКРАЇНИ В СУЧАСНИХ УМОВАХ**

**Постановка проблеми.** Модернізація господарсько-правового механізму повинна починатися, як уявляється, саме з інвестиційного та інноваційного інститутів. Законодавче втілення новітніх моделей господарювання у відповідних сегментах спрямоване на вирішення завдань, які актуалізовані в суспільстві для безперерійного функціонування не тільки національної, але і світової економічної системи. Інвестиційний та інноваційний інститут є стратегічними інститутами в усій системі господарювання, і від їх законодавчого забезпечення буде залежати рівень розвитку економіки в цілому. Удосконалення та реформування відповідних законодавчих сегментів можливе шляхом прийняття відповідних кодифікацій, які будуть початком процесу кодифікації також і інших сегментів системи господарського законодавства.

**Аналіз останніх досліджень і публікацій.** Тематика законодавчого забезпечення інноваційного та інвестиційного законодавства розглядалась у роботах вчених-господарників, таких як: Ю. І. Атаманова, В. О. Бударна, О. В. Гладка, Д. В. Задихайло, В. В. Кудрявцева, В. С. Мілаш, О. В. Швердіна та ін. Зрештою, критична маса наукових робіт по цих двох напрямках дозволяє сформувати універсальну теоретичну матрицю для відповідних досліджень, що важливо не тільки для новітніх науково-теоретичних результатів, але й для підвищення якості законодавчого реформування в цих сферах господарювання.

**Формулювання цілей.** Метою цієї статті є аналіз стану чинного інвестиційного та інноваційного законодавства України, а також формування концептуальних підходів до його подальшого вдосконалення та модернізації.

**Виклад основного матеріалу.** В Україні склалася специфічна ситуація в економічній сфері, коли після декількох хвиль реформування ключові інститути господарювання все ще потребують суттєвих законодавчих змін, адже не відповідають реаліям сучасних суспільно-економічних процесів. Гостра необхідність модернізації всієї сфери господарювання шляхом реформування господарсько-правових механізмів і повинна відбуватись у формі масштабних кодифікаційних робіт з одночасним змістовним реформуванням нормативно-правового матеріалу. Розпочати цей систе-

матизаційний процес у господарському законодавстві, яке вже має Господарський кодекс України, як уявляється, доцільно з кодифікацій законодавчого регулювання інвестиційної та окремо інноваційної діяльності.

**Висновки.** 1. Подальший розвиток інвестиційного й інноваційного законодавства, що має на меті реальне стимулювання відповідних економічних процесів, повинен передбачати концептуальну модернізацію змісту і структурування нормативного матеріалу підгалузей господарського права – інноваційного та інвестиційного.

2. В основу такої модернізації має бути покладено усвідомлення системного характеру цих відносин, організованих у ринковій формі, тобто структурування матеріалу у відповідності до його топографії організації інвестиційного та інноваційного ринку. Зокрема: ринковий товар; накопичення ринкового потенціалу; пропозиція; попит; інфраструктура; рівновага; засоби державного регулювання; форми існування тощо.

3. Очевидно, що такому структуруванню кореспондує проблема кодифікації відповідних підгалузей законодавства, систематизація норм, у межах яких має умовну відповідність до структурної організації названих ринків.

4. Проблема створення необхідного інвестиційного та інноваційного клімату в країні, що активізував би зазначені процеси, звичайно не обмежується станом інвестиційного та інноваційного законодавства. Але законодавче регулювання є найбільш потужним чинником суспільно-економічних перетворень, а отже, вимагає створення моделей оптимізації законотворчої діяльності в інвестиційній та інноваційній сферах.

#### **Коротка анотація до статті**

**Анотація.** У статті звернуто увагу на відсутність систематизованого підходу до законодавчого забезпечення інноваційного та інвестиційного секторів економіки. Адже систематизація відповідного правового матеріалу, його якісна складова та деталізація застосування окремих правових засобів у регулюючому механізмі інноваційного та інвестиційного законодавчих інститутів дозволили підняти економіку країни на вищий щабель. Відтак актуалізовано питання щодо концептуальних підходів до процесу вдосконалення та модернізації відповідних законодавчих інститутів, а також встановлення необхідних методів стимулювання відповідних законодавчих процесів.

**Ключові слова:** інвестиційне законодавство, інноваційне законодавство, державне приватне партнерство, кодифікація інвестиційного законодавства, кодифікація інноваційного законодавства.

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