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LEGAL FRAMEWORK FOR IMPLEMENTATION OF INFRASTRUCTURE INVESTMENT PROJECTS (ON THE EXAMPLE OF PUBLIC UTILITIES SPHERE IN UKRAINE)

The article deals with the issues of defining the legal framework for implementation of investment projects, supported by international financial organizations. The issue of forming the legal basis for implementation of investment projects was disclosed. The paper analyzes procedure of initiation, preparation, implementation and monitoring of the projects for economic and social development of Ukraine, supported by international financial organizations. The author examines legal aspects of attracting and return of financial resources of international financial organizations. The attention is paid for directions to improve the efficiency of investment projects implementation, including those being implemented in the sphere of public utilities.

Key words: international financial organizations, investment projects, modernization of infrastructure, sphere of public utilities.

Statement of the problem. In previous years absence of consolidated system reforms aimed to modernize objects of centralized heating, water and sewage in Ukraine resulted a critical level on the rate of depreciation of fixed assets in the industry. Today, service life of the most mentioned objects in the sphere much higher than 20 years. Unsatisfied technical condition of infrastructure objects, exploitation of outdated and worn-out equipment leads to inefficient use of energy, and thus provides substandard services to consumers. Significant losses in the system, payment for which transfers to final consumers, economically unjustified tariffs and low payment discipline of consumers in general - all this begets financial problems in most utilities. Enterprises barely make ends meet, delaying payments for the cost of natural gas and electricity to suppliers and wages to employees. According these objective circumstances, enterprises are not financially able to invest more funds and to modernize and upgrade infrastructure. Therefore practical and urgent necessity belongs to the question of attracting external financial resources for implementation of public services in major infrastructure projects.

Private investors do not hurry to invest in development of utility infrastructure in Ukraine, because security of their investments and opportunities for profit from this activity remains uncertain. International financial organizations (hereinafter - IFO), unlike private investors, have more prospects to gain refund. Thus, if the state involves funds of IFO, the Law on State Budget should provide funds for implementation of investment projects, servicing and repayment of IFO's credits and loans. In addition, the legislation fixes the mechanism to provide state and local guarantees to support complete or partial performance of debentures by entities that receive funds from the IFO for implementation of relevant investment projects. That's why much of the infrastructure projects in Ukraine are implemented with financial support from IFO, including institutions of the World Bank, the European Bank for Reconstruction and Development, the European Investment Bank.

However, question about effectiveness of using borrowed IFO's funds does not lose its relevance due to the fact that the vast majority of investment projects are often not completed in time; borrowed funds are not completely used, what in turn does not contribute to the goal of these projects. This situation, on the one hand, is connected with the level of preparation and implementation of such projects. On the other hand, it is stipulated by certain shortcomings in the mechanism of state regulation.

Level of exploration. The theoretical basis for this study were research papers and analysis of O. Dunas, O. Ieremenko, Y. Ivanenko, Y. Kovbasiuk, S. Kruhlik, L. Saakadze, A. Shatkovskiy, etc. These scholars explored issues of cooperation with international financial organizations.

The purpose of this article is to determine legal framework for implementation of infrastructure investment projects, on the example of IFO activity in the sphere of public utilities in Ukraine. Considering aforementioned purpose the paper will cover the following issues:

- formation of a legal framework for investment projects supported by the IFO in Ukraine;

- a procedure of initiation, preparation, implementation and monitoring of projects referred to economic and social development of Ukraine and supported by IFO;
- legal aspects of attracting and return of IFO's financial resources;
- proposals to improve the efficiency of investment projects, including those being implemented in the sphere of public utilities.

Presentation of the basic material. Cooperation between Ukraine and IFO began in 1992 with the adoption of the Law of Ukraine "On Ukraine's accession to the International Monetary Fund, the International Bank for Reconstruction and Development, International Finance Corporation, the International Development Association and the Multilateral Investment Guarantee Agency". In August 1992, by the Decree of the President, Ukraine became a member of the European Bank for Reconstruction and Development, and in April 2006, with the entry into force of the Framework Agreement between Ukraine and the European Investment Bank, cooperation with this international financial organization has started. Ukraine also cooperates with such IFO as the Black Sea Trade and Development Bank (since 1997), the Nordic Investment Bank (since 2006), The Nordic Environment Finance Corporation (since 2010). The list of these IFO is not comprehensive¹.

Credits and loans of IFO are provided at a sufficiently favorable terms, including small interest and long-term maturity. It is also important that financial resources of the IFO to address pressing economic and social problems are mainly directed to development of strategic sectors of the economy and infrastructure.

For example, IFO in Ukraine mainly support projects aimed at development of financial sector, agriculture, transport, energy, utilities, energy efficiency and development of renewable energetics, improvement of social assistance, development of health care, etc.²

By funds raised under cooperation of Ukraine with IFO structural economic and social reforms that are necessary for sustainable development may be implemented. So intensification and expansion of this cooperation is one of the priorities of the government.

In 2007 Ukraine joined the Paris Declaration on Aid Effectiveness³. This led to the need for a new approach to understand the role of international technical assistance and resources of international financial organizations, and also the need to improve legal framework and institutional mechanisms for coordinating cooperation and improve the effectiveness of aid from IFO.

Ukraine's accession to the Declaration paved the way for determining the nationally strategic areas to attract financial resources of IFO. Thus, in 2009 the Cabinet of Ministers of Ukraine approved strategic directions and objectives to attract international technical assistance and cooperation with international financial organizations for the period up to 2012⁴. In 2013 a new three-year strategy of attracting, using and monitoring of international technical assistance and cooperation was approved⁵. These documents define general framework of cooperation between Ukraine and the IFO, fundraising priorities and expected results

¹ Співробітництво з міжнародними фінансовими організаціями. *Урядовий портал (єдиний веб-портал органів виконавчої влади України)*. <http://www.kmu.gov.ua/control/publish/article?art_id=244829807> (2015, November, 06).

² All Projects and Programs in Ukraine. *The World Bank's web-site*. <<http://www.worldbank.org/en/country/ukraine/projects/all>> (2015, November, 06); Project Summary Documents: Ukraine. *Web-site of the European Bank for Reconstruction and Development*. <<http://www.ebrd.com/work-with-us/project-finance/project-summary-documents.html?l=1&filterCountry=Ukraine>> (2015, November, 06); Finance contracts signed – Ukraine. *Web-site of the European Investment Bank*. <<http://www.eib.org/projects/loans/regions/cei/ua.htm>> (2015, November, 06).

³ Указ про приєднання України до Паризької декларації щодо підвищення ефективності зовнішньої допомоги 2007 (Президент України). *Офіційний сайт Верховної Ради України*. <<http://zakon5.rada.gov.ua/laws/show/325/2007>> (2015, November, 06).

⁴ Розпорядження про схвалення Стратегічних напрямів та завдань щодо залучення міжнародної технічної допомоги і співробітництва з міжнародними фінансовими організаціями на 2009 – 2012 роки 2009 (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/1156-2009-%D1%80>> (2015, November, 06).

⁵ Розпорядження про схвалення Стратегії залучення, використання та моніторингу міжнародної технічної допомоги і співробітництва з міжнародними фінансовими організаціями на 2013 – 2016 роки 2013 (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon5.rada.gov.ua/laws/show/697-2013-%D1%80>> (2015, November, 06).

of this activity.

In addition, new regulations to improve the mechanisms of cooperation between Ukraine and IFO were adopted. Thus, in 2008 the Cabinet of Ministers of Ukraine adopted a decree that settled the order of initiation, preparation and implementation of projects referred to economic and social development of Ukraine and supported by IFO¹. In October 2011 the Cabinet of Ministers of Ukraine approved the Concept for planning, engaging, effective use and monitoring of international technical assistance and cooperation with international financial organizations². This Concept outlined problems and identified the need for further improvement of mechanisms and instruments of international technical assistance and financial resources, and improvement of quality of project planning and implementation.

Thus, during 2007 - 2011 years Ukrainian legislation determined legal principles and developed general organizational and legal mechanisms for cooperation between Ukraine and IFO, thus improving effectiveness of attracting and using of financial resources, the structure and quality of IFO projects, in particular through its reorientation from social and humanitarian sphere for implementation of profitable and self-supporting infrastructure projects³.

The main legal act regulating the procedure of initiation, preparation, implementation and monitoring of such projects is the Decree of Cabinet of Ministers of Ukraine dated 26 November 2008, № 1027 (hereinafter – the Decree).

Under this Decree there are two types of projects funded by the IFO resources - systemic and investment projects. These projects differ significantly from each other in order of preparation and implementation, as well as by the procedure decision-making and project management.

Systemic projects are aimed at supporting reforms in Ukraine, under which the loan is used to finance the state budget. These projects do not suggest targeted directing of financial resources provided by IFO to beneficiaries or specific applications; they are used to balance the state budget and returned from the state budget⁴.

Unlike systemic projects the investment projects are implemented by legal entities on terms of financial viability. That is, the legal person (the beneficiary) receives a loan, provides targeted effective use of borrowed funds, carries servicing and repayment of loans by its own account. The Decree classifies investment projects as projects to develop institutional capacity of executive body, institution or organization, in which repayment and servicing of loans is exercised by the expenses of the state budget.

In general mechanism for implementation of investment projects looks as follows. Project proposals are developed based on approved by IFO strategic and program documents on cooperation with Ukraine; after this the decision on appropriateness or inappropriateness of investment project is taken. In case of positive decision Ministry of Economic Development addresses to IFO with a proposal for joint preparation of such a project. If IFO support investment project its preparation begins.

A term to prepare the investment project should not exceed 12 months. During this time, a responsible performer defined by the Ministry, organizes preparation of the project, appoints its coordinator, forms a group of project management, with the agreement of IFO drafts action plan for preparation of the project, selects legal entities which will receive a loan for the project and will provide its implementation (hereinafter - beneficiary), makes development and approval of procurement plan and documents required for implementation of the project. At this stage the delegations of Ukraine and IFO conduct negotiations, by which results IFO should send a notice of acceptance of the project and the loan to

¹ *Постанова про порядок ініціювання, підготовки та реалізації проектів економічного і соціального розвитку України, що підтримуються міжнародними фінансовими організаціями 2008* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon5.rada.gov.ua/laws/show/1027-2008-%D0%BF>> (2015, November, 06).

² *Розпорядження про схвалення Концепції планування, залучення, ефективного використання та моніторингу міжнародної технічної допомоги і співробітництва з міжнародними фінансовими організаціями 2011* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon2.rada.gov.ua/laws/show/1075-2011-%D1%80>> (2015, November, 06).

³ *Управління проектами розвитку: навчально-методичний посібник* (2013). Київ: ДП «Укртехінформ», 21–22.

⁴ *Аналіз ефективності використання позик міжнародних фінансових організацій на виконання системних та інвестиційних проектів економічного та соціального розвитку України. Офіційний сайт Рахункової палати України*. <<http://www.ac-rada.gov.ua/control/main/uk/publish/article/863269>> (2015, November, 06).

Ukraine. The result of these actions is signing of the Loan Agreement between Ukraine and the IFO, and also signing of appropriate agreements between IFO and beneficiaries, between the Ministry of Finance and beneficiaries and (or) a responsible performer, between the Ministry of Finance and the City Council, and other agreements; and also adoption of legal acts necessary for implementation of the investment project. It should be noted that the Loan Agreement is an international treaty, and therefore its performance does not depend on political and administrative changes in the country.

When the Loan Agreement enters into force, an action plan for implementation of the project, selection of banks and opening of special accounts to service the loans should be exercised. At the implementation stage beneficiaries carry out targeted use of loan to fulfill the procurement plan and for servicing and repayment of a loan.

The project monitoring is performed by authorized entities at all stages of the project cycle. By the results of the project after the use of borrowed funds the final report is prepared with its subsequent approval by the Cabinet of Ministers of Ukraine. If it is stipulated by the Loan Agreement, the text of approved final report should be sent to the IFO. Upon completion of the investment project a responsible performer or beneficiary provides audit and financing of the project.

Thus, the Decree introduced a new simplified procedure for initiation, preparation and implementation of projects supported by the IFO. This, in turn, allowed significantly expand and accelerate access to investment resources of IFO, improving monitoring and evaluation of projects and ensuring effective and transparent process of procurement planning for projects of IFO¹.

The state receives financial resources for investment projects granted by IFO in the form of a loan or a credit, and individual entities, engaged in the implementation of investment projects - under state or local warranties.

According to the Budget Code, loans and credits for investment projects from international financial organizations, involved by the state on the basis of international treaties of Ukraine, are state foreign loans². So, the funds to implement such investment projects as well as maintenance costs and repayment of redits (loans) are provided for in the Law on State Budget of Ukraine for the entire term of the loan agreements.

Due to the fact that investment projects are implemented on conditions of finance self-support directly by legal entities after signing of the Loan Agreement between IFO and Ukraine, the Ministry of Finance of Ukraine, which acts as financial agent of the Cabinet of Ministers of Ukraine, recredits part of the loan (credit) to the relevant legal entity. Under the terms of subsidiary loan agreement such entity agrees to use these funds for targeted purpose, to return the amount of a subsidiary loan, to pay the costs for servicing the loan, and pay others payments, provided under the contract. In addition, these agreements provided provisions on participation and joint responsibility of regulatory authorities related to proper implementation of such projects.

In case of delayed return and improper servicing of a subsidiary loan and other payments by an entity, the state independently perform all obligations before IFO at the expense of the state budget. In this case, the state acquires the rights of a lender and requires such entities to repay outstanding debt and penalties as prescribed by law.

For public (local) guarantees the situation is similar. When the state (Autonomous Republic of Crimea or local community of a city) fulfills warranty obligations before creditors by payments from the state (local) budget or by negotiating with creditors on agreements restructuring amounts which should be returned, since that implementation business entities get outstanding debts before the state (Autonomous Republic of Crimea or local community of a city). And the state (ARC or territorial community), in accordance, receive the rights of a lender and requires such entities to repay outstanding debt as prescribed by law.

Thus, current Ukrainian legislation provides a number of guarantees for proper performance of obligations before IFO. As financial resources for investment projects are involved in accordance with relevant international agreements at the highest national level and belongs to government borrowings, the state is responsible for their return. Therefore, even if business entities will not be able to make a timely

¹ *Управління проектами розвитку*: навчально-методичний посібник (2013). Київ: ДП «Укртехінформ», 21–22.

² *Бюджетний кодекс України 2010* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <<http://zakon5.rada.gov.ua/laws/show/2456-17/page2>> (2015, November, 06).

return of the amount of a loan received for investment projects, the financial resources will be in time returned to IFO from the state budget.

In the context of our research quite sensible is an idea that in order to direct funds for restructuring of the economy we need to restore state participation in the investment process as the initiator, investor, guarantor, regulator and controller¹.

With the implementation of investment projects in the sphere of public utilities the state, represented by the relevant authorities, in fact, serves as the initiator and guarantor of the obligations under the relevant loan agreements concluded with IFO.

Thus, the state represented by the Cabinet of Ministers of Ukraine as the initiator of investment projects determines strategic directions of cooperation with IFO and performs direct involvement of their financial resources.

Among strategic directions for 2013 - 2016 years, the Cabinet of Ministers of Ukraine stipulates, in particular, to accelerate development and modernization of infrastructure and to promote balanced and harmonious development of regions. This, in turn, provides a comprehensive modernization of district heating systems, water supply and sewage, and improving of energy efficiency in these areas by disseminating practice of energy saving and energy efficiency technologies.

In connection with these directions in public utilities sphere implementation of several investment projects was started. Thus, the World Bank funded project to develop urban infrastructure (Second Urban Infrastructure Project), as well as the project aimed at improving energy efficiency in the district heating sector (District Heating Energy Efficiency)². European Bank for Reconstruction and Development is financing a number of infrastructure projects in the district heating in some cities of Ukraine such as Lviv, Lutsk and Poltava³. In 2015, Ukraine and the European Investment Bank signed an agreement on the loan for implementation of the program for development of municipal infrastructure (Ukraine Municipal Infrastructure Programme)⁴.

As the guarantor the state acts by fixing in the Law on State Budget of Ukraine expenditures for implementation of investment projects as well as expenses for servicing and repayment of loans (credits).

However, a significant drawback, which prevents successful implementation of investment projects in Ukraine, is the lack of a unified strategy that would identify main directions and measures for infrastructure development in the sphere of public utilities, would be acceptable and performed both at national and regional levels, regardless what political forces come to power. Initiation, preparation and implementation of such projects should be according to sector strategies, developed with participation of experts, representatives of government and business and approved at the highest national level. Thus, the question about implementation of infrastructure projects should be transferred from political to economic sphere and not depend on political and business interests of certain persons and their electoral term.

In order to improve implementation of investment projects we need to address the issues of prompt implementation of measures and use of borrowed resources, management of investment projects and to ensure systematic control over preparation and implementation of projects.

Conclusions. The main legal act regulating the procedure of initiation, preparation, implementation and monitoring of projects referred to economic and social development of Ukraine, supported by international financial institutions is the Decree of Cabinet of Ministers of Ukraine adopted in 2008. This Decree regulates basic procedural points of implementation of investment and systemic projects funded by the IFO. Intensification of cooperation between Ukraine and IFO and expanding format for such cooperation is one of the priorities of the government. Therefore, the legislation defines legal principles and develops general organizational and legal mechanisms of such cooperation.

¹ Ковалівська, С. (2015). Три кити нової інвестиційної політики. *Інститут суспільно-економічних досліджень*. <<http://ises.org.ua/analitika/ekonomichnii-analiz/tri-kiti-novoyi-investitsiinoyi-politiki>> (2015, November, 06).

² All Projects and Programs in Ukraine. *The World Bank's web-site*. <<http://www.worldbank.org/en/country/ukraine/projects/all>> (2015, November, 06).

³ Project Summary Documents: Ukraine. *Web-site of the European Bank for Reconstruction and Development*. <<http://www.ebrd.com/work-with-us/project-finance/project-summary-documents.html?l=1&filterCountry=Ukraine>> (2015, November, 06).

⁴ Finance contracts signed – Ukraine. *Web-site of the European Investment Bank*. <<http://www.eib.org/projects/loans/regions/cei/ua.htm>> (2015, November, 06).

IFO grant financial resources for investment projects to the state in the form of loans or credits or to separate business entity engaged in realization of investment projects under state or local warranty. These loans and credits relate to state foreign loans, so the state is responsible for their return, particularly in the cases prescribed by law and for the costs of the state budget.

Today, the law provides that the Loan Agreement, under which the IFO funds are involved, belongs to international agreements, so their performance is independent of political changes in the country. In addition, the Subsidiary Loan agreements provided joint responsibility of regulatory authorities in case of improper performance of the agreement and in accordance with the implementation of infrastructure investment projects. However, despite the fact that the mechanism for realization of supported by IFO investment projects was much improved, a number of issues, caused by specifics of public utilities sphere, require further development. In particular, the issue of development and approval at the highest level of a single strategy (concept) for development of municipal infrastructure, which will be performed regardless certain political forces coming to power, as well as issues related to improvement of efficiency of investment projects.

One of strategic directions in economic development of Ukraine is to accelerate modernization of infrastructure in the sphere of public utilities. Thus, an effective mechanism to attract and protect private investors in infrastructure projects is not provided by law. The only existing mechanism that provides investment protection with implementation of infrastructure projects in public utilities is the mechanism of implementation of infrastructure investment projects supported by the IFO. Only this model may be used in development of a mechanism to attract private investors in the sphere of public services.

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