

Features of Use of State Property by Private Business Entities

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Abstract

In this article, the characteristics of the use of state property by private business entities are analyzed in detail on the basis of civil law and theory.

Keywords: economic, business, legislation, law, foreign, basis, source.

Various legal structures are used for the use of state property by private business entities, and the most modern form of use of state property is the public-private partnership.

One of the effective means of attracting private investment to the economy is public-private partnership, which is widely used in the developed countries of the world. is a tool.

Article 13 of the Law of the Republic of Uzbekistan "On Public-Private Partnership" adopted on May 10, 2019 [1]. Private partner A public-private partnership project is prepared by a state initiator or a private initiator. In this case, the private partner is determined on the basis of tendering and direct negotiations (Part 1 of Article 21 of the Law on Public-Private Partnership).

PPP participants to have a legal status, a certain system of legal facts must exist and they must be implemented in the following stages: 1) the first stage is to send a project implementation proposal and review this proposal; 2) the second stage - evaluation of project efficiency and determination of comparative advantages of the project; 3) the third stage - making a decision on the implementation of the project; 4) the fourth stage - holding a tender for the right to conclude an agreement on PPP; 5) the fifth stage - conclusion of a direct PPP agreement and a direct agreement.

All these stages are carried out on the basis of certain requirements, conditions and procedures, and the relevant rights and obligations are imposed on the parties. PPP is carried out in accordance with all the rules at the stages, starting from the initiation of the PPP project, preparation of the project, keeping the register of projects, receiving information about the projects, holding a tender for the right to conclude a transaction, conducting direct negotiations, and concluding a PPP transaction.

A.O. Kazakov [2], the rights and obligations of PPP participants will apply to the following areas:

- ✓ regarding the object of the transaction (design, construction, reconstruction);
- ✓ regarding the use of the object of the transaction (operation, maintenance);

- ✓ related to the creation and transfer of property rights to the object of the transaction;
- ✓ regarding attracting investment to the object of the transaction.

In our opinion, there should be a unified approach to the rights and obligations of the parties regarding the property rights in relation to the object of the transaction and the issue of the transfer of this right to the private partner should be clarified. After all, according to experts, a legal model has been formed in foreign countries regarding the preservation of ownership rights to the object of the PPP in the private partner[3].

According to the first part of Article 30 of the Law "On Public-Private Partnership", the obligation of the public partner to give the object (property) to the private partner can be specified in the PPP agreement. In this case, the elements of ownership and disposal of property rights are passed. At this stage, the transfer of property to a private partner is carried out in the scope of the rights provided for in the lease agreement (Article 535 of the FC). In this case, the party that has the right of ownership in relation to the relevant object of the PPP transaction is to grant the right of ownership and use, as well as the right to rent in relation to various objects (real estate (for example, land plots) and movable property, intangible assets) only within the framework of the implementation of the project, that is, for a specific purpose. gives directed to. The plot of land to be given to the private partner is required to be " under the control of the state partner or local executive authorities ". However, in the Decree of the President of the Republic of Uzbekistan No. PF-6243 of June 8, 2021 , starting from August 1, 2021, "the allocation of land plots to state bodies, institutions, enterprises, citizens' self-government bodies - on the basis of the right of permanent use " was [4] determined.

However, the Decree of the President of the Republic of Uzbekistan No. PF-6243 dated June 8, 2021 states that "land can be leased to a private partner, non-governmental non-profit organization and other institutions of civil society for the period of validity of the public-private or social partnership agreement [5].

In addition, the second part of Article 31 of the Law stipulates that a plot of land will be given to a private partner without an auction in order to fulfill the obligations related to the PPP agreement. Also, this Decree stipulates that " the following powers of local state authorities regarding land relations, the right to adopt a decision, order or other type of document regarding them will be canceled from August 1, 2021."

In this regard, the provisions of Article 31 of the Law on PPP should be harmonized with this Decree.

According to the rule, ownership of the PPP project object can be transferred to a private partner and to the state asset management agency.

Today's important issues in the field of public-private partnership (PPP) include: the concept, tasks and main directions of PPP; The range of PPP participants, their rights and obligations; Guarantees of compliance with the rights and legal interests of PPP participants, transparency and effectiveness of the use of funds by business entities; Priority areas in which PPP projects will be implemented; The procedure and conditions for the promotion of PPP participants and the implementation of control in this area.

Based on the fact that today the legislation in the sphere of PPP is about to be formed, getting acquainted with the essence of the law "On Public-Private Partnership", which is planned to be adopted, in this draft law, the provisions on the contractual-legal regulation of public-private partnership relations are more widely expressed, agreements of this type and it should be noted that it is important to clearly define the procedure and conditions for concluding contracts, the obligations of the parties to the PPP contract, and the measures of civil liability for non-fulfillment of this contract.

At the same time, the legal nature of Uzbekistan's PPP and the absence of developments related to the legal regulation of this field also show the relevance of this graduate work.

Contractual-legal regulation of public-private partnership is a unique new reality. At present, lawyers have not fully formed a certain idea about the concept of PPP, its nature and content, PPP projects and their implementation methods and ways. Therefore, it is important to develop the concept of PPP, its legal definition and practice of law enforcement, to evaluate a specific type of activity on this basis. In this case, if PPP is a means of attracting private investment, a method of conducting a certain type of activity jointly by state and private partners, mutual distribution of various risks, and a form of distribution of production means and equipment are considered economic factors, legal formalization of these processes is considered a legal mechanism. Therefore, contractual and legal regulation should be the main tool in these processes.

Currently, the concept of a PPP contract, its subjects and objects, the rights and obligations of the parties have not yet been fully formed, and even today, not a single PPP contract has been concluded in Uzbekistan. The reason for this is that this type of activity has not yet been introduced in Uzbekistan and its legal basis has not been created. Therefore, today it is important to develop a model draft of the contract on PPP and have it approved by the competent state body in the form of a recommendation, to introduce the content and nature of PPP to private business entities, to explain the mechanisms of its implementation, and to show the advantages of this type of activity.

In addition, legal experts face the problems of determining the types of civil-law contracts used in the legal regulation of PPPs, adapting these contracts to the activities of PPPs, changing and adding additions to the current legislation based on the characteristics of PPPs.

In the socio-economic development of Uzbekistan, ensuring the well-being of the population, implementing the economic policy based on private entrepreneurship aimed at social protection is of great importance. In this case, the state is the main reformer and in the implementation of this task, the state should engage in active economic interaction with other subjects of law in all spheres of public life. This, in turn, requires the development and effective legal regulation of the most optimal mechanisms for providing the state's needs and meeting the requirements of today's market relations. Currently, the state is paying special attention to the use of various ways of attracting investments to the economy and production. Public-private partnership is one of the most effective ways to implement projects that are important for the economic and social development of the country by attracting private investments to the economy, combining production means and equipment, and distributing risk.

Public-private partnership is a legally formalized joint effective and profitable activity of public and private partners with the following goals:

- 1) attraction of private investment in the economy;
- 2) pooling resources and reducing the risk of risk.

These goals are primarily focused on the implementation of projects and programs of social importance, investment, innovation, infrastructures and other important state, public and economic importance.

The main task of public and private partnership is to create conditions for the effective cooperation of public and private partners for the socio-economic development of the country, increase the employment of the population, increase the standard of living, and improve the quality of goods, works, and services. The following are the main principles of public procurement:

legality;

voluntariness, equality and fairness;

voluntary fulfillment of the obligations of the parties to the public-private partnership agreement;

openness and transparency;

mutual respect, consideration of interests and accountability;

efficiency.

The following can be indicated as signs of public-private partnership:

defining the relationship between the public partner and the private partner by concluding a public-private partnership agreement;

implementation of public-private partnership projects in medium and short terms and, according to the rule, setting terms from three to thirty years based on the specificity of public-private partnership projects;

transferring part of the risk to a private partner;

joint participation of the public partner and the private partner in the implementation of the public-private partnership project, as well as pooling resources.

As a rule, public-private partnerships are implemented in the following areas: science, technology and innovation; medicine; education, culture and social services; physical education and sports; telecommunications; transport services; road management; housing and communal services; engineering communications. ; production of construction materials; fuel and energy and chemical industry; renewable energy sources; machine building; metallurgy; agriculture and water management; nature protection;

At the same time, public-private partnership can be implemented in areas other than those listed. In the indicated areas, public-private partnership involves the implementation of one or more of the following tasks: design; financing; construction; reconstruction; research; service.

Regardless of the field of public private partnership, its main goal is to attract private investment. Therefore, it is necessary to dwell on the essence of private investment.

World experience shows that no country has achieved economic development without foreign aid, in other words, without foreign investment and aid, apart from the world economy. The history of development of developed countries shows that the role of foreign and private investments in the reconstruction, modernization and development of the economy is extremely large, and the importance of public-private partnership is high.

Public-Private Partnership - public and private partnerships for the purpose of attracting private investments to the economy, pooling resources and sharing risks, implemented for the implementation of socially significant investment, innovation, infrastructure and other projects and programs important for the state, society and economy. is a mutually beneficial cooperation that is legally formalized for a period of time.

Analysts who have studied international experience write that in recent years, public-private partnership is emerging as the most demanding mechanism for solving long-term tasks while creating very important infrastructural conditions . According to some experts, it is difficult to even imagine the functioning and development of the national innovation system without this mechanism. Because entering into cooperative relations with private business provides an opportunity to reduce the burden

on the state budget and implement the project without bureaucratic obstacles.

The private sector, on the other hand, enjoys a number of preferences, such as managing public assets over the long term, often with preferential terms such as guaranteed investment returns.

Analyses of public-private partnerships at the level of the national economy over the past two decades have shown that the approach of using this tool is recognized as an effective way to attract investment in large-scale projects. In addition, the existence of the necessary legal framework naturally played a major role in the development of this direction. Also, the role of special institutions, which perform tasks such as organization of such partnership and systematization of its principles at the federal or regional level, was specially recognized by experts.

According to the United Nations Commission on Social and Economic Development, there are currently more than 50 institutions for the development of public-private partnerships in different countries of the world. 24 of them are located in Europe, 2 in North America, 5 in South America, 7 in Africa, 13 in Asia. In addition, there are 9 international organizations that perform tasks related to public-private partnership along with a number of main functions. Among them are the UN, the European Bank for Reconstruction and Development, and the International Finance Corporation.

In the studies, emphasis was placed on the specific aspects of the experiences that served as an important factor in the formation and development of this partnership in some developed countries of the world.

The first step towards the legal basis of public-private partnership was made in Great Britain. The first step to attract private capital to the implementation of an investment project in this country was in the 80s of the last century. The purpose of such an event is to reduce the impact of the public sector on the economy. In the 90s, this practice was widespread. In 1992, in order to encourage more active participation of the private sector in public projects, the program "Private Finance Initiative" (PFI) was implemented, and this direction took a new shape. Now this movement has become an important component of the general programs of the government. It covers the process of privatization, other forms of public-private joint ventures, and the provision of guarantees. At the same time, the IOM program has its own characteristics. That is, the project implemented in this way was considered not from the point of view of the state buying new assets, but from the perspective of how positively this practice will affect the standard of living of the population. In this case, the private sector side of the partnership assumes a long-term commitment to provide services for a specific asset, as well as a portion of the project risk. The state, in turn, is charged with a long-term obligation to ensure the demand for a specific product or service. The main criterion for making decisions in a partnership in the form of a private finance initiative is the evaluation of the ratio of cost and quality. This evaluation is based on a system of principles related to economic aspects, efficiency and effectiveness of products, services and processes.

The practice of public-private sector cooperation projects in the UK covers various sectors, social sectors, transport infrastructure, information technologies, military production. But in major projects, the share of transport is somewhat larger, such as the reconstruction of the London Underground, the expansion of highway networks, and the construction of large-scale bridges.

The effectiveness of public-private partnership policy practices in Great Britain has been confirmed based on independent audit reports. According to the information in this report, two-thirds of all projects related to such partnerships were completed on time and did not exceed the project budget. At the same time, this kind of cooperation has led to a somewhat sustainable saving of financial resources compared to other forms of state financing.

Another noteworthy point is that the positive results of the Private Finance Initiative program enabled the establishment of the Center for the Development of Public-Private Partnerships in Great Britain for the first time in 1999. The main task of this center is to help the public sector in the implementation of purchases and selection of suppliers, in the management of public-private partnership projects based on the involvement of external consultants. The charter of the center stipulates the protection of state interests based on the principle of private finance initiative. At the same time, in order to reduce as much as possible the conflict of interests between the state and private business, an Advisory Council was established in the British Treasury, whose members consist only of civil servants. This council does not interfere in the work of the Center for the Development of Public-Private Partnership, its decision-making process, and at the same time, it is obliged to monitor the effective operation of the Center from the point of view of compliance with state interests.

According to the legislation, state organizations and customers may apply to other commercial offices in addition to this center regarding the practice of public-private partnership. Such an arrangement is, of course, established in order to ensure competition. However, as observed in practice, the majority of public-private partnership projects were implemented with the participation of a special center. The main reason for this was the operation of these centers under the auspices of the country's treasury. In the researches of the experts, it was specially recognized that the world financial and economic crisis that started in 2007 did not exclude any sector of the national economy, and it did not fail to show its negative impact on all forms of mutual cooperation. During this period, many public-private partnership projects were suspended due to lack of funding. In the same context, as part of the measures taken by the UK government in 2009, a separate section on infrastructure financing was opened in the treasury of the country in order to encourage the participation of private business in such cooperation.

In addition, new tasks have been assigned to this department and the Public-Private Partnership Development Center. To ensure the further development of methodological approaches to public procurement by them, to improve the legal structure of the contractual basis of public-private partnership and the consistency of these projects, to improve the level of awareness about them, to improve the accountability system of the progress of the implementation of these projects, to increase transparency during the composition and implementation of these partnership projects, transaction attention is paid to issues such as cost reduction.

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