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STATE PARTICIPATION IN ENSURING INVESTMENT ACTIVITY IN THE SPHERE OF ENVIRONMENTAL PROTECTION AND USE OF NATURAL RESOURCES

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Резюме: В данной статье рассматриваются вопросы государственного регулирования инвестиционной деятельности в сфере охраны окружающей среды и использования природных ресурсов. Авторами рассматриваются проблемы государственного управления охраной окружающей среды и использования природных ресурсов при осуществлении инвестиционной деятельности и предлагаются пути их решения.

Түйін: Бұл мақалада мемлекеттік инвестициялық қызметті реттеу саласындағы қоршаған ортаны қорғау және табиғи ресурстарды пайдалану қарастырылады. Авторлар қоршаған ортаны қорғау және табиғи ресурстарды пайдалану инвестициялық қызметті жүзеге асырудың кезінде мемлекеттік басқару мәселелерін қарастырады және оларды шешу жолдарын ұсынады.

Summary: This article discusses the issues of state regulation of investment activity in the field of environmental protection and use of natural resources. The authors consider the problems of state management of environmental protection and use of natural resources in the implementation of investment activities and suggest ways to solve them.

Effective transformation of economy is impossible without active state intervention in regulating financial flows, capital investments in production facilities and in the field of social security. The role of state involvement in regulating investment relations in the sphere of environmental protection and use of natural resources remains significant, especially the fact that natural resources are owned by state.

Before moving on to the concept of state management in the sphere of investment activity, it should be noted that there is management not only in legal branch, but in science in general.

In fact, management is one of the most difficult and responsible areas of intellectual and practical activities of people. It is sphere welfare of society and fates of people depend on. Management exists in interaction of people within subjective factor.

State management is regulating activity of state as a whole (activity of state representative bodies, executive bodies, prosecutor's office, courts, etc.). In a broad sense, state management characterizes all the activities of state in organizing effects of special law subjects on social relations by representative bodies, executive bodies, prosecutor's office, courts, etc.).

The prerogative of state is to maintain order and national security of country, which will be the basis for developing investment activities.

In our opinion, state regulation of investment activity is activity of state represented by its authorities and aimed at implementation of state policy in the sphere of investment activities.

State regulation of investment activities is necessary in order to ensure implementation of public interests of society and state and to create better conditions for economic development of country.

State regulation of investment activity is a system of legislative, executive and supervisory nature, carried out by competent state institutions to stimulate investment activity and economic growth based on it. Legislative regulation of investment activity is intended not to cancel principles and mechanisms of market economy and not to replace them by decision-making, but rather to promote favorable conditions for stimulating investment activity of entities, based on the market mechanism [1].

As a whole, state uses administrative and economic methods of influence on investment activity and economy by publications and adjustment of relevant legislative acts, by carrying out certain economic, including investment policy, in order to perform their functions in the field of investment activities.

The state is to connect interests of society, aimed primarily at preserving its well-being, in regulating investment activity in the sphere of environmental protection and use of natural resources.

One of the most important tasks for state is a clear systematic management of public finances. Effectiveness of state in the face of crisis depends on the level of organization of public finances, degree of selection mechanisms for legal regulation used by the state in the process of formation and use of state cash fund [2].

State intervention must benefit all segments of society in order to achieve the most efficient social production.

Public production can be efficient only when there is harmonious development for all the structures of society, i.e. when along with manufacturing sector, investments provide necessary development of social, economic and cultural spheres.

Implementation of investment policy through appropriate legislation, essentially aimed at improving socio-economic situation in society as a whole. Solving economic problems is closely related to legal issues, so, according to some experts, investment policy can be considered the most important direction of state socio-economic policy to achieve goals by public administration and legal security of funds.

There is no special law regulating state activity in the field of investment. In 2003, the Law “On state support of direct investments” was abolished. However, abolition of this law was understandable, since 2003 the Law “On Investments” has been adopted which contains necessary rules on state support.

Basic principles of state investment policy were legally registered in the Law “On state support of industrial and innovative activity”, adopted in 2012 [3]. This document defined preconditions for promoting investment processes. According to this law, the purpose of state support of industrial innovation activities is to increase competitiveness of national economy by stimulating development of priority economic sectors defined by the President of the Republic of Kazakhstan. One of the main objectives is to increase investment attractiveness and export potential of industrial innovation subjects.

The law defines industrial-innovative activity as activity of individuals or legal entities, related to implementation of industrial and innovative projects with a view to ensuring environmental safety in order to increase productivity and provide incentives for developing priority sectors of economy or with promotion of domestic processed goods, works and services in domestic and (or) foreign markets, with participation of capital in it, directly or indirectly owned by the state.

It should be noted that the state created a few National institutions as subjects of industrial and innovative system, performing state support for industrial and innovative activity. National Development Institute was created to involve the state to support investment activities in the field of attracting investments, which include the following functions:

- 1) conducting analytical studies to improve investment attractiveness of the Republic of Kazakhstan;
- 2) providing information on activities of foreign investors, including organization of meetings between investors and state bodies, subjects of industrial - innovative activities, as well as with associations of private enterprise entities, carrying out business-forums, conferences and seminars on investment issues, creates and maintains a database of foreign investors;
- 3) promoting favorable investment image of the Republic of Kazakhstan, including provision of information on investment opportunities;
- 4) monitoring implementation of official agreements reached following the results of negotiations with foreign investors;
- 5) monitoring of industrial-innovative projects implemented with participation of foreign investors.

The state also takes measures to attract foreign investments including:

- 1) search and negotiations with potential foreign investors to attract them to participate in industrial and innovative projects;
- 2) attracting subjects of industrial and innovative activities to participate in business forums, conferences and seminars on investment topics;
- 3) dissemination of information on industrial and innovative projects in foreign media through foreign establishments of the Republic of Kazakhstan, as well as through foreign diplomatic missions and equivalent representative offices and consular institutions on the territory of the Republic of Kazakhstan [4, p. 16].

According to the Law of RK “On investments”, investment ombudsman was created, whose main functions are the following:

- consideration of investors appeals’ on issues arising during implementation of investment activities in the Republic of Kazakhstan and recommendations for their solving, including interacting with government agencies;
- assistance of investors in addressing emerging issues in the court and pre-trial procedures;
- elaboration and submission of recommendations on improving legislation of the Republic of Kazakhstan to the Government of the Republic of Kazakhstan [5].

In the framework of State Program of Industrial-Innovative Development of Kazakhstan for 2015-2019, large investment projects will be implemented in accordance with proposals of business structures with total investment of more than 400 billion KZT, aimed at increasing of production volumes and value added products and reducing negative impact on environment [6].

By 2050 their usage will help generate up to 50% of all energy consumed. Obviously, the era of hydrocarbon economy has ended. Kazakhstan is one of the key elements of global energy security. Our country, possessing large oil and gas reserves of the world level, will not recede from its policy of reliable strategic partnership and mutually beneficial international cooperation in the energy sector.) [7]:

- exhaustion of natural resources (in conditions of scarcity and depletion of Earth’s natural resources, consumption growth unprecedented in human history will fuel multidirectional both negative and positive processes). Kazakhstan

has a number of advantages. Other countries and nations will need our resources. It is essential that we rethink our attitude to our natural wealth. We need to learn how to properly manage it, saving our export revenues from their sales in the treasury, and most importantly – effectively transform natural resources of our country to sustainable economic growth [8].

The Law “On investments” and other normative-legal acts regulate foundations of investment activity in the Republic of Kazakhstan, including activity performed by foreign individuals and legal entities.

This Law hardly has any regulations for environmental protection. Article 11 only proclaims the purpose of state support of investments, which is to create favorable investment climate for developing economy and stimulating investments into creating the new, expansion and updating of operating productions applying modern technologies, professional training staff in Kazakhstan as well as environmental protection [9].

The important place in system of state regulation measures for investment activity is examining investment projects. All investment projects are the subject to assessment regardless of funding sources and ownership forms of objects to their approval in accordance with the law of RK [10].

Examination of investment projects is carried out in order to prevent from creating objects, the use of which violates the rights of individuals and legal entities and state interests or does not meet requirements of duly approved standards (norms and rules), and to assess investment effectiveness.

The state provides guarantees of investment activity to entities and protects their capital investments. Thus, all potential investors have equal rights when practicing investment activity. Investments can be nationalized only under condition of preliminary and equivalent compensation of losses caused to subjects of investment activities; they may be requisitioned by the decision of state bodies within cases, procedures and terms defined by RK legislation.

Taxation system is very important for environmental management, based on payable principle of this activity. Natural resource users are obliged to pay taxes in due time in accordance with article 492 in Tax Code [11].

There is an indisputable fact that the state fully remains the owner of natural resources (except for the right of land ownership) and has the right to determine specific conditions of their use within interests of whole society.

State ownership of natural resources is dominant in the structure of legally defined ownership forms. The state established its ownership rights for land, water, mineral resources, forests, wildlife and other objects. However, having based on this, the question arises on delimitating state ownership of natural resources between subjects of country.

Article 85 of the Constitution of the Republic of Kazakhstan defines that “local state management is exercised by local representative and executive bodies which are responsible for the state of affairs in the territory”. This means that municipal ownership includes municipal land and other natural resources in the territory of local representative bodies. Accordingly, local authorities manage this property. In accordance with laws, they have the right to transfer municipal property for temporary or permanent use to natural and legal persons, rent, dispose in the established manner as well as make other trades with property, being in municipal ownership, determine terms in contracts and agreements to use objects privatized or transferred to use. Local authorities may also establish conditions in public interest to use lands, located within boundaries of municipality, in accordance with law.

However, if there are all the necessary legal acts, why is it not as harmonious as it seems? The state of natural resources and protection of environment leaves much to be desired. As it was mentioned above, Kazakhstan adopted the Concept on transition to green economy. This concept requires a clear legislative framework to attract foreign and domestic investment in industry.

The President of Kazakhstan determined 100 steps for implementing five institutional reforms:

- formation of modern state office;
- ensuring law supremacy;
- industrialization and economic growth;
- nation of common future;
- transparency and accountable state.

One of these tasks, namely task 59, states that involvement of strategic investors in the field of energy conservation via internationally recognized mechanism of energy service contracts. Their main task is to stimulate development of private energy service companies to provide complex services in the field of energy saving with reimbursement of their own expenses and financial gain from actually achieved energy savings [12].

This requires introduction of considerable amendments in the regulatory legal acts of the Republic of Kazakhstan, including the Law of the Republic of Kazakhstan “On energy saving and energy efficiency” [13]. It is necessary to make a separate article regulating energy service agreements (contracts) and contracts of purchase and sale, supply, transfer of energy resources, including terms of energy service agreements (contracts). The Law mentions the energy service agreement (contract). Besides, in January 14, 2015, the law was amended, adding function to develop energy service contracts within competence of authorized body. The Law also refers to the Order of the Minister on Investments and Development of the Republic of Kazakhstan dated March 31, 2015 [14] “On approval of standard forms of energy service contracts”, which contains a standard form of such contract. In our opinion, the basic law requires understanding the concept of energy service contract, its subject matter, content and order of conclusion.

Thus, it is impossible to identify peculiarities of state management of investment activities in the field of environmental protection and use of natural resources without studying specific character of ecological-legal measures to ensure it. The measures include environmental regulations, state environmental expertise and other types of examinations and state supervision over rational use and protection of mineral resources and safety of work related to subsoil use.

The lack of officially proclaimed and sustained public investment policy and holistic investment legislation has a huge impact on state participation in regulating investment activities in the field of environmental protection and use of natural resources.

Thus, state regulation of investment activity in the sphere of environment protection and natural resources management is a purposeful activity of state, represented by its bodies responsible for implementation of state policy in the sphere of investment activities and activities in the field of environmental protection and rational use of natural resources. The role of state bodies in ensuring investment process in the field of environmental protection and use of natural resources takes a special place. In turn, state is necessary to ensure investment attractiveness of natural resources to improve country's economy. At the same time use of natural resources should not harm environment. These questions are very important within protecting national economy and environmental protection. It is necessary to create an authorized committee for protecting environment, which will not be included in any ministry and will be established as an independent organization.

One of the possible problem solutions of insufficient investment in nature protection can be introduction of new environmental policy at the state level, which will include environmental insurance system and norms of state promotion of environmentally friendly production. Key points recommend including the following main areas:

- improvement of investment policy in the field of nature use and environmental protection;
- determining sector protection of natural resources as a priority for investment;
- improvement of normative and legal support;
- creating conditions for attracting international companies with production of high-tech products. These companies in developed countries prepare an individual core, which provides welfare gains of industrial society and determine statics and dynamics of economic processes;
- foreign investments should not lead to environmental disasters in the regions. It is important to develop a competent legal framework for regulating environmental implications from activities of foreign companies.

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