

Foreign Investment in Ukraine: Types and Forms

Volodymyr Kossak* and Halyna Yanovytska

Department of Civil Law and Procedure, Ivan Franko National University of Lviv, Lviv, Ukraine

Abstract: An important condition for the transition to a market economy is the intensification of the investment process. Among other factors, attracting foreign investment is crucial. For their effective use, an appropriate regulatory framework for regulating the legal basis for their implementation is required. It is necessary to determine the range and legal status of foreign investors, types and forms of foreign investment, legal means of protection of the rights of foreign investors. At the same time, the mechanism of regulation and protection of foreign investments is influenced by the legal regime of investment, which is established by the national legislation of Ukraine. The article is devoted to the classification of types of foreign investment. Money, goods and corporate rights, intellectual property, rights in them and securities rights, requirements for the exploitation of natural resources as a form of foreign investment are considered. The legal regime of the listed types of foreign investments are analyzed in detail. The evolution of legislation in the field of foreign investment regulation is investigated. Knowledge on foreign investment, is a legal regime as comprehended. The directions of improvement of the mechanism of attraction of foreign investments by established privileges in taxation of profits of foreign investors, legal support of the investment process is highlighted. Prospects of foreign direction and sphere of investment state policy of Ukraine are analyzed.

Keywords: Investment process, evolution of legislation, types of foreign investors, investment legislation, legal regime of foreign investments.

INTRODUCTION

World experience shows that the shortest way to raise the quality of productive forces to a new level is to make optimum use of investments in various organizational and legal forms. Legal regulation of foreign investment is carried out by national legislation, which is influenced by international law. Internal law establishes the legal regime of foreign investment, namely: national, preferential or restrictive. The choice of specific remedies to regulate foreign investment depends on the specific socio-economic conditions. The model with the national regime is characteristic of industrialized countries. The preferential regime for foreign investment is prevalent in developing countries. The formation of a legal regime for foreign investment in the world indicates a tendency to unify the conditions of division of investors into national and foreign ones. The essence of this trend lies in the non-discriminatory approach to foreign investors, which covers not only the level of taxation but also access to centralized supply, preferential lending, and the foreign exchange market.

While agreeing that the foreign investment regime needs special incentive and protection measures, it should be noted that these measures can be applied under the national foreign investment regime. The preferential regime alone cannot compensate for the adverse investment climate caused by internal

instability. Use of benefits, along with sound legal guarantees, should be aimed primarily at reducing the risk of capital loss. The best option is to regulate internal and foreign investment on an equal footing. Nevertheless, this is possible if the country reaches a certain level of development of productive forces. Conversely, in order to achieve this level, attracting advanced technologies and funds for their implementation at some stage is advisable to grant foreign investment a privileged regime. However, admission of foreign investment to the national economy can have unfavorable effects. There have been precedents in international practice when transnational corporations (TNCs), which are economically more powerful than domestic investors, made significant investments that adversely affected the political or economic development of these countries.

Foreign investors, by investing their capital, are guided by the theory of international export marketing. Accordingly, favorable conditions for investment are: political stability; economic stability; existence of stable national legislation on foreign investments; state of the internal market, the degree of its saturation with commodity products and satisfaction of consumer demand, approximation to the sources of raw materials, the cost of production of investment projects that are being created and terms of their payback, the possibility of transportation and sale of products, etc. Conversely, foreign businessmen detect as barriers to foreign investment: frequent changes of investment legislation; tax legislation unfavorable for foreign

*Address correspondence to this author at the Ivan Franko National University of Lviv, Lviv, Ukraine; Tel: +380322394111; E-mail: kossak15@tanu.pro

investors; the absence of a freely convertible national currency; imperfection of the banking system; lack of information on the most profitable places of investment.

MATERIALS AND METHODS

One of the aims was to analyze an investment policy of Ukraine. We conducted a historical review of Ukraine's investment legislation since the declaration of independence (Resolution of the Verkhovna Rada... 1991) to the present day. This method demonstrated the speed of legislative reforms in the country: the first Law of Ukraine "On Foreign Investments" was adopted in 1992 (Law of Ukraine No. 2198-XII... 1992). The analysis of investment legislation has shown its two-system nature (the rules governing the general investment provisions): The Commercial Code of Ukraine (2003), The Civil Code of Ukraine (2003), Law of Ukraine No. 3480-IV "On Securities and the Stock Market" (2006) and the rules governing the procedure for attracting foreign investment: Law of Ukraine "On Foreign Investments", Law of Ukraine No. 1540a-XII "On Protection of Foreign Investments in Ukraine" (1991).

Moreover, scientific sources (Dolzer and Schreuer 2012; Artisien-Maksimenko *et al.* 2016) confirm that foreign regulations have a significant impact on the formation of investment legislation. The classification was used to determine the types and forms of foreign investment, using the legal provisions (Law of Ukraine No. 2198-XII... 1992; Law of Ukraine No. 1457-III... 2000) and proposals of scientists set out in their fundamental works (Peitsch 1997; Maydanyk 2008; Spasibo-Fateeva 2012). The article demonstrates the problems that may accompany foreign investors and options for solving them in court (Case of the Zaporizhia Regional... 2016). As a result, we tried to outline further prospects for attracting foreign investment to Ukraine, based on the current level of legislative support, which may be the subject of further research.

RESULTS AND DISCUSSION

The Evolution of Investment Law in Ukraine

Foreign investment law consists of general international law, of standards more specific to international economic law, and of distinct rules peculiar to the protection of investment. In addition, the law of the host state plays an important role. Depending upon the circumstances of an individual

case, the interplay between relevant domestic rules of the host state and applicable rules of international law may become central to the analysis of a case. The domestic rules on nationality may determine jurisdiction in a particular case. Other areas of domestic law that may become relevant in a particular case include property law, commercial law, labour law, zoning law, and tax law to name just a few (Dolzer and Schreuer 2012).

Like most of the other former Soviet republics, Ukraine is on the path from being a centrally planned economy to one based on market principles (Peitsch 1997). In Ukraine the legislation on foreign investment has evolved evolutionarily, from the administrative-command system to the market economy. In the Resolution of the Verkhovna Rada of Ukraine "On the Declaration of Independence of Ukraine" (1991) of August 24, stated that "since the declaration of independence, only its Constitution, laws, governmental decrees and other acts of the legislation of the republic are valid in the territory of Ukraine". As there was no special legislation on foreign investments in Ukraine at that time, according to the Law of Ukraine No. 1543-XII "On the succession of Ukraine" (1991), acts of the Union of the SSR are applied on the territory of the republic. However, on issues not regulated by the legislation of Ukraine, until the adoption of acts of the legislation of Ukraine and if they do not contradict the Constitution and laws of Ukraine. In particular, this Law permitted the provision of the Fundamentals of Legislation on Foreign Investments in the USSR, adopted on July 5, 1991. But already on September 10, 1991, the first Law of Ukraine No. 1540a-XII "On Protection of Foreign Investments in Ukraine" (1991) was adopted after Ukraine's independence. The content of this Law regulated the state-legal guarantees of protection of foreign investments in Ukraine. The next stage was the adoption on September 18, of the Law of Ukraine No. 1560-XII "On Investment Activity" (1991), which regulates the legal principles of investment, including foreign ones. This law defines the range of possible subjects of investment activity, legal forms and types of investment activity. The law contained provisions on state legal guarantees for the protection of investors' rights. This legislative act was complex in nature because it contained provisions that regulated investment activity of both internal and foreign investors. The law contained general provisions on foreign investment, which led to the adoption of an act of legislation specifically devoted to the regulation of foreign

investment. However, the adoption of this law created the legal basis for the formation of the investment market and their regulation in Ukraine.

The result of the evolution of Republican legislation in the field of investment regulation was the Law of Ukraine No. 2198-XII "On Foreign Investments" (1992), which came into force on March 13. The purpose of this law was to attract additional investment finances, advanced foreign technology and management experience in the development of production of goods and services to the country. For that reason, in this act of legislation, through investment legal means, an investment policy was formulated aimed at the development of productive forces with the attraction of foreign funds. The law enumerates the subjects of investment relations, legal types and forms of foreign investment, and provides for a procedure for their registration. The law provided for a wide range of state legal guarantees for the protection of foreign investments. In our view, based on the list of guarantees (in particular, the prohibition of nationalization of foreign investment; requisition is possible only in cases directly provided by law, etc.), tax exemptions (exemption from taxation on profit (income) for five years in combination with the prohibition collection of new types of taxes that did not exist at the time of its enactment) – this law created favorable conditions for investing foreign capital. However, there was no significant inflow of foreign investments. This situation is explained by many factors, among which the absence of the Ukrainian currency played one of the most important roles.

Instead, the number of joint ventures with a small share of foreign contribution to the statutory fund began to increase. This situation is explained by the fact that the enterprises in the statutory fund of which the share of foreign capital was not less than 20%, were exempt from taxation on profit (income) for five years. This led to the creation of a large number of joint ventures, where the share of foreign capital was sometimes 100 US dollars. The latter, in our opinion, played a decisive role in the decision to terminate this law and to enter into force on June 5, the Decree of the Cabinet of Ministers of Ukraine "On the Foreign Investment Regime" (1993). The issued act basically retained the structure and spirit of the Law of Ukraine No. 2198-XII "On Foreign Investments" (1992). At the same time, it contained a number of new provisions aimed at encouraging significant foreign investment. In particular, the notion of qualifying foreign investment was introduced. It amounted to at least 20% of the

statutory fund and at the same time could not be less than the amount equivalent of 100 thousand US dollars as the contribution of property, intellectual property, property rights – for banks and other credit and financial institutions; 50 thousand US dollars – for other enterprises (organizations). In the case of foreign investment in the other types envisaged by the Resolution, the qualifying share should be at least 1 million US dollars for banks and 500 thousand US dollars for the rest of the enterprises (organizations).

The types and forms of foreign investments listed in the aforementioned Decree were similar in the Law of Ukraine No. 2198-XI "On Foreign Investments" (1992). The Resolution specified the procedure for valuation of foreign investments, which was carried out by the parties (participants) at the prices of international markets at the time of their contribution. In addition to the above regulation acts, the State Program for Encouragement of Foreign Investments (Law of Ukraine No. 3744-XII... 1993) was approved. The purpose of the State Program for Encouragement of Foreign Investments, adopted on December 17, was to stimulate investment of foreign capital in priority sectors of the Ukrainian economy by providing tax benefits and insurance guarantees to the most effective investment projects; improving the system of legal regulation of foreign investment. This act established the requirements for investors who could apply for additional benefits.

The Current State of Investment Legislation in Ukraine

In modern Ukraine, the notion of investment and investment has become a scientific turning point as a result of the reform of the economy into a market economy (Aleskerova and Fedoryshyna 2018). However, the enacted legislation did not dramatically affect the dynamics of attracting investment to the country. Therefore, on March 19, with the adoption of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996), the Law of Ukraine "On Foreign Investments" (1992), "On the State Program for Encouragement of Foreign Investments in Ukraine" (1993) and the Decree of the Cabinet of Ministers of Ukraine "On the Foreign Investment Regime" (1993) became invalid. This Law, unlike previous legislative acts, practically does not provide benefits for foreign investors. In general, it equalizes the legal status of internal and foreign investors, declaring a national regime for the latter's investment activities. The Commercial Code of Ukraine (2003) contains Chapter

38 "Foreign Investments". Most of the provisions of this chapter to some extent duplicate some regulations of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) or refer to the said Law. This concerns the identification of the range of foreign investors, forms of foreign investment, state registration of foreign investment, guarantees of foreign investment. As for the definition of types of foreign investments, Article 391 of the Commercial Code of Ukraine (2003) refers to the relevant provisions of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996).

The Law of Ukraine No. 1560-XII "On Investment Activity" (1991) sets out the general rules for investment activity in Ukraine. It is aimed at ensuring equal protection of the rights, interests and property of the subjects of investment activity, regardless of ownership, as well as efficiency of investment. With regard to the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996), the provisions of the commented Law can be considered as general, which regulate investment relations not regulated by special legislation on foreign investments. Some foreign investment issues are governed by separate laws. These include, inter alia, the Law of Ukraine No. 1457-III "On the Elimination of Discrimination in Taxation of Entities Established Using Property and Funds of National Origin" (2000). This law is aimed at protecting competition between business entities created without attraction of funds or property (property or non-property rights) of foreign origin, and business entities created with the participation of foreign capital; ensuring state protection of the domestic producer.

In order to implement the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996), the resolutions of the Cabinet of Ministers of Ukraine regulate certain aspects of foreign investments in the territory of Ukraine. In particular, the Resolution of the Cabinet of Ministers No. 937 approved the "Procedure for issuing, accounting and redemption of promissory notes issued during the importation into Ukraine of property as contribution of a foreign investor to the statutory fund of a company with foreign investments, as well as under joint investment activity agreements (contracts) and payment of import duty in case of alienation of this property" (1996). This Procedure defines uniform rules for issuance, accounting and redemption of promissory notes issued for the purpose of registration of tax-free import into the territory of Ukraine of property, as a contribution of a foreign investor to the statutory fund of a company with foreign

investments, as well as under agreements on joint investment activities.

The legislation of Ukraine on foreign investments combines the principle of freedom of investment with the possibility obtaining of a permit. Such a conclusion is based on the fact that certain types of foreign investments may be restricted in accordance with the procedure established by the legislation of Ukraine. In particular, Art. 7 of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) establishes the national regime of investment and other commercial activity for foreign investors, with the exceptions provided by the legislation of Ukraine and international treaties of Ukraine. This creates the basis for the adoption of such legislative acts that would have some exclusions from the principle of freedom of foreign investment.

Types of Foreign Investments in Ukraine

In Art. 3 of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) also states that foreign investments can be made in forms not prohibited by the laws of Ukraine. In Part 3 of Art. 7 of the same law explicitly provides for the possibility of determining the territories in which the activities of foreign investors and enterprises with foreign investments are restricted or prohibited based on national security requirements. Therefore, in the investment legislation of Ukraine the principle of freedom of investment is combined with the possibility obtaining of a permit for certain types of investment activities. Foreign investors can make investments in the territory of Ukraine in the types stipulated by law. First and foremost, it concerns convertible currency. The economy of Ukraine needs to attract foreign investments in freely convertible currency in order to invest it in major investment projects. Converted currency is the currency determined by the National Bank of Ukraine.

To foreign currency, the monetary law also applies the payment documents and other securities (stocks, bonds, coupons, promissory notes (drafts), debt receipts, letters of credit, cheques, bank orders, certificates of deposit, other financial and bank documents), expressed in foreign currency or monetary metals. Monetary metals are gold and metals of the iridium-platinum group in any form and condition, except for jewelry, industrial and household articles of these metals and scrap of these metals. Reinvested funds in the currency of Ukraine are subject to the

payment of investment income tax, also belong to foreign investments. The currency of Ukraine is recognized in the form of banknotes, treasury tickets, coins and other forms in circulation and legal tender in the territory of Ukraine, as well as withdrawals or withdrawn from circulation, but subject to exchange for currency in circulation, funds, accounts with banking and other financial institutions in Ukraine.

The Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) emphasizes that the currency of Ukraine is considered one of the types of foreign investments when reinvesting in the object of initial investment, and when subject to the payment of taxation on profit (income) in any other objects of investment in accordance with legislation of Ukraine. The next type of foreign investment is any movable and immovable property and related property rights. According to Part 1 of Art. 181 of the Civil Code of Ukraine (2003) to immovable things (real estate, immovable property), include land plots, as well as objects located on the land plot, the movement of which is impossible without their depreciation and change of their purpose. In the context of foreign investment law, the investor must first purchase the property and then invest in the investment object.

Foreign investors have the right to make investments in the territory of Ukraine in the form of stocks, bonds, other securities, as well as corporate rights (ownership rights to a share (membership share) in the statutory fund of a legal entity in accordance with the legislation of Ukraine or the legislation of other countries), which are expressed in converted currency. The currency legislation of Ukraine attributes such securities to currency values, combining them with a single concept – "foreign currency". In particular, various operations can be carried out on stocks by both stockholders and other participants in the stock market. Stockholders have the right to dispose of stocks at their own discretion: to sell, donate, bequeath, pledge, change, contribute as a contribution to the statutory fund of a company.

Securities belong to so-called "portfolio" investments. The latter means the granting of credits by foreign states; purchase of government bonds and other government securities; purchase of stocks, securities of enterprises, commercial banks, stock exchanges, etc. Public credit issues are governed by credit programs developed by international organizations and international agreements. The regulation of portfolio investment should be

implemented by national law. The relations related to the emitment and circulation of securities are regulated by the Law of Ukraine No. 3480-IV "On Securities and the Stock Market" (2006), Law of Ukraine No. 448/96-VR "On State Regulation of the Securities Market in Ukraine" (1996), Law of Ukraine No. 710/97-VR "On the National Depository System and Features of Electronic Securities Circulation in Ukraine" (1997) and etc., as well as by-laws. To this type of investment, certain provisions of the Law of Ukraine No. 2121-III "On Banks and Banking" (2000) may apply.

Based on the interpretation of Art. 2 of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996), foreign investors carry out their activities through the direct purchase of property and property complexes or in the form of stocks, bonds and other securities. That is, when it comes to stocks, bonds and other securities or corporate rights, it means investing a foreign investor in convertible currency for the purpose of acquiring securities. The Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) emphasizes that stocks, bonds and other securities, as well as other corporate rights must be expressed in convertible currency. In addition to stocks, bonds and other securities, the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) provides that foreign investments can also be made in the form of corporate rights. It may be the ownership rights to a share (membership share) in the statutory fund of a legal entity, created in accordance with the legislation of Ukraine or the legislation of other countries.

In Art. 2 of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) contains a list of types of foreign investment. Among others, the definition of corporate rights is given, which means the right of ownership of a share (membership share) in the statutory fund of a legal entity established in accordance with the legislation of Ukraine or the legislation of other states. This formed the basis for the position (Kossak and Bachun 2003), which defines corporate rights as the right of ownership of a share (membership share) in the statutory fund of a legal entity, including the right to manage and receive the appropriate share of profits of such legal entity, as well as assets in the event of its liquidation. The Tax Code of Ukraine (2010) defines corporate rights as the rights of a person whose share is defined in the statutory fund (property) of a business entity, including the authority to participate in the management of a business entity, receiving a certain share of profits (dividends) and

assets in case of liquidation in accordance to the law, as well as other powers provided by law and statutory documents.

The concept of corporate rights is contained in special acts of legislation governing certain types of companies. According to paragraph 8, part 1 of Article 2 of the Law of Ukraine No. 514-VI "On Joint Stock Companies" (2008) corporate rights – is a set of property and non-property rights of the owner of shares of the company (shareholder), arising from ownership of shares, including the right to participate in management, receipt of dividends and assets of the joint-stock company in case of its liquidation in accordance with the law, as well as other rights and powers provided by law and statutory documents. I. Spasibo-Fateeva (2000) is also offered corporate rights as property rights to a share (membership share) in the statutory fund (capital) of a legal entity, including the right to manage, receive the relevant part of the profit of such legal entity, as well as share of assets in case of liquidation. Corporate rights, the definition of which is contained in the law, can be considered as an objective right. However, if corporate law belongs to a particular person, it is a subjective civil law. In this regard, objective law regulates civil relations, and subjective law, depending on this regulation, gives a person certain opportunity to exercise civil rights (Michurin 2009).

The right to participate belongs to the organizational (non-property) rights certainly. As noted by R. Maydanyk (2008), participation in organization as an object is able to meet the needs of the subject to which it belongs. The right to participate in the company is an element of organizational relations, and the latter are a prerequisite for the emergence of non-organizational legal relations (property and non-property). Without organizational relationships, non-organizational ones (those that are organized) will have no value (Spasibo-Fateeva 2012). The procedure for exercising the powers of a foreign investor to participate in a corporation and its consequences may be the subject of corporate disputes.

An example is a case *Magna International Inc. (Canada) vs Tavriya-M Limited Liability Company (Ukraine)*, which was considered by the Zaporizhia Regional Commercial Court (Case of the Zaporizhia Regional... 2016). The Canadian company referred to the fact that its share in the authorized capital of Tavriya-M LLC was 25%, respectively, the value of the share should be in the event of its withdrawal from the

circle of participants 25% of the amount of capital. The total cost of the participant's contribution was 4138.7 Canadian dollars. The decision to pay the plaintiff the value of the share of property in proportion to the share in the authorized capital was made on April 23, 2013, formalized by the minutes of the meeting No. 46 (Case of the Zaporizhia Regional... 2016). According to this decision, the value of part of the company's property due to be paid, proportional to the plaintiff's share in the statutory fund, is UAH 2,331,250.00. This decision was made due to the lack of profit of the company in 2012. By letters dated June 7 and November 5, 2013, the defendant confirmed his obligation to pay the debt, while stating that it was impossible to settle due to the difficult financial situation.

According to Art. 11 of the Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) in case of termination of investment activity a foreign investor has the right to return, not later than six months from the date of termination of its activities in kind or in the currency of investment in the amount of actual contribution (taking into account the possible reduction of statutory fund), as well as income from these investments in cash or in kind at the real market value at the time of cessation of investment activities, unless otherwise provided by law or international treaties of Ukraine. According to the official exchange rate of the National Bank of Ukraine at the time of filing the lawsuit, the value of the plaintiff's share of the property, proportional to the share in the state capital in Canadian dollars is 130,551.15 Canadian dollars (equivalent to 2,331,250.00 Ukrainian hryvnias).

When a participant leaves the company, he is paid the value of part of the company's property, proportional to his share in the statutory fund (capital). Payment is made after approval of the report for the year in which he left the company, but not later than 12 months from the date of withdrawal. In the commented case, at the time of resolving the dispute, no share was paid in proportion to the size of the statutory fund. A participant who left the LLC "Tavriya-M", using his right to withdraw from the membership, acquired the right to receive a share of the company's property in proportion to the size of his share in the statutory fund in the amount of UAH 2,331,250.00 kop. (130,551.15 Canadian dollars). The court satisfied the claims of Magna International Inc. (Canada) in full 2016 (Case of the Zaporizhia Regional... 2016).

Once a foreign company has decided in favour of FDI (foreign direct investment), its next step is to select

the most appropriate FDI structure. The selection, to a large degree, depends on the investor's motive and on the industry's characteristics (Artisien-Maksimenko *et al.* 2016). The type of foreign investment may be monetary claims and rights to contractual obligations, guaranteed by first-rate banks and having a value in convertible currency, validated in accordance with the laws (procedures) of the investor country or international trading customs. A variety of such payment requirements are promissory notes, checks and more. By its legal nature, a bill is a security. It always recorded as a cash commitment with a certain amount. The monetary obligation contained in the promissory note must be absolute, that is, it is assumed that the promissory note was issued for pecuniary pleasure.

Therefore, investing in the objects of investment activity of monetary claims and the right of claim to fulfill contractual obligations, which have a value in converted currency, is a type of foreign investment. This type of investment must be validated in accordance with the laws (procedures) of the investor country or international trade customs and guaranteed by first-rate banks. Foreign investment, in accordance with the legislation of Ukraine, may be in the form of any intellectual property rights, the value of which in a converted currency is confirmed in accordance with the laws (procedures) of the investor country or international trade customs, and also confirmed by expert evaluation in Ukraine. Including legalized copyrights in Ukraine, inventions, industrial designs, utility models, signs for goods and services, know-how etc. The recognition of the rights of authors on works of science, literature, and art as an intellectual property, has made it possible to create legal conditions for the transfer of the rights to these works to others.

From the general concept of intellectual property, international legal documents distinguish separately industrial property. One of the main features of industrial property is that their owner is given a legal monopoly on this property. The use of the object by others without the permission of the authorized person is an offense. In this aspect, the transfer of industrial property rights under the contract plays a significant role in international economic cooperation. The persons who owns such objects, give them to other users in the form of full assignment of rights (under the contract of sale) or in the form of temporary right of use (under the license contract). At the same time, the law of obligations on the conclusion of the contract, its performance, liability, etc., as well as the rules of case-

law defining the rights and obligations of the parties, are also applied to the relations of the parties. The subject of the agreement is the transfer of the right to use industrial property for a fee.

As to investment activity, none of these contracts may apply. The transferred industrial property rights have a capital expression. But to persons who own industrial property, their value is not paid. Industrial property rights must be contributed in the objects of investment activity. The profit (income) from this activity, and not from the use of industrial property directly, is obtained by the owner of the latter (in this case, a foreign investor). Therefore, foreign investment can be considered only intellectual property rights, the value of which is confirmed in accordance with the laws (procedures) of the investor country or international trade customs, as well as expert evaluation in Ukraine, including legalized copyrights, rights to inventions, utility models, industrial models, brand marks or trademarks, service marks, industrial designs that are contributed in the objects of investment activity. The intellectual property must be subject to legal protection both in the investor country and in the host country.

The Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996), enumerating intellectual property rights, does not establish an exhaustive list of them. Therefore, any object in intellectual property that is recognized as such and protected by the legislation of Ukraine may be a foreign investment. Of course, the rights to each of these objects have a different meaning, validity, which significantly affects their practical implementation, but they can all be made in the form of investments. A type of foreign investment is the right to economic activity, including the right to use the subsoil and to use natural resources provided in accordance with legislation or treaties, the value of which is converted in foreign currency in accordance with the laws (procedures) of the investor country or international trade customs.

International experience shows that the exploitation of natural resources has always attracted foreign investment. This explains the adoption of special regulatory acts of the legal regime of participation of foreign capital in the development of natural resources. Therefore, concession activity can be one of the forms of active participation of foreign investors in Ukraine. The country has large deposits of ornamental stones, kaolin, coal, iron ores, manganese, uranium, titanium, chromium, nickel, lithium, zirconium and other minerals (more than 80 types). The term concession refers to an

act of public authority by which a state grants a foreign legal or natural person a special right to participate in the implementation of a certain type of economic activity aimed at achieving a social goal. A concession is characterized by the fact that the legal entity is provided with a document that defines certain rights and obligations. The legislation of Ukraine on foreign investments provides for granting to foreign investors the rights for development and exploitation of renewable and non-renewable natural resources. Such activity shall be carried out on the basis of concession agreements concluded with foreign investors by the Cabinet of Ministers of Ukraine or the authorized body, in accordance with the procedure regulated by the legislation of Ukraine on subsoil. Therefore, the development and exploitation of natural resources is carried out in accordance with concession contracts.

The rights to development and exploitation of natural resources are granted for a fee. Concession fees are the fees paid by the concessionaire for the right to use the concessioned objects. The size of the concession payments, the terms of their payment, the form, the type of currency in which they are paid shall be determined by the concession contract. The Law of Ukraine No. 93/96-VR "On the Foreign Investment Regime" (1996) emphasizes that foreign investments can be made in the form of other values in accordance with the legislation of Ukraine. Therefore, it can be considered that the above list is not exhaustive and in the absence of direct prohibition in the laws of Ukraine, foreign investments can be made in other types.

In 2020, in order to improve the investment climate, it is planned to change the legislation towards tax simplification and reduction of tax pressure. Among other things, it is planned to provide tax holidays for foreign investors who are involved in large-scale privatization. In particular, a foreign investor who invests 10 million US dollars or more in a privatization object will not pay income tax for 5 years (Goncharuk 2020). In order to liberalize the procedure of investment activity in Ukraine, the Law of Ukraine No. 2473-VIII "On Currency and Monetary Transactions" (2018) and the Law of Ukraine No. 155-IX "On Concessions" (2019) was adopted.

CONCLUSIONS

The issue of attracting foreign investment in the Ukrainian economy remains relevant in the current period. The President of Ukraine and the Prime Minister of Ukraine at the Davos International Forum

noticed it in 2020. In September 2019, a Memorandum of Understanding was signed between the Ministry of Infrastructure of Ukraine and the largest railway operator in Germany, Deutsche Bahn, for 10 years. The state policy of Ukraine is focused on the investor and protection of his interests. In particular, it is planned to lead in Ukraine an "Investment Nanny" program, according to which every investor, a large company that will invest in Ukraine 100 million US dollars and more will provide a separate contract with the state to appoint a manager – investment nanny. This manager will solve any legal problems that will arise in the course of investment activity. This investor support program will apply not only to potential investors, but also to those already operating in Ukraine.

The basis for securing the interests of the investor is the recognition of the supremacy of law. Establishing the supremacy of law is a prerequisite for attracting foreign investment in Ukraine. Country and the entire state system must carefully fulfill the contractual investment obligations. An important component of improving investment capital is having attractive investment projects. Their implementation will be carried out on the basis of public-private partnership legislation. Thus, the legal basis for the implementation and functioning of foreign investments, as well as the list of state-owned objects whose privatization will affect the attraction of foreign investment in Ukraine.

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