

Regulatory and legal support for the implementation of the business partnership mechanism as a basis for analyzing the functioning of such a mechanism

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Abstract

At the current stage of development of economic relations, business partnership is one of the productive forms of cooperation in the economic life of any country. The purpose of the article was to study the regulatory and legal support for the implementation of the business partnership mechanism as a whole and in the context of cooperation between the state and business and the formation of proposals for its improvement. To realize the specified goal and achieve scientifically based results in the research process, general scientific and specific methods of knowledge of phenomena and processes were applied in the context of the object-subject base of research, in particular: analysis and synthesis, induction and deduction, logical-structural, comparative analysis, generalization, modeling. The characteristics of the provisions of the Constitution of Ukraine, the Civil and Economic Tax Codes, the new Law of Ukraine «On the peculiarities of the regulation of the activities of legal entities of individual organizational and legal forms in the transitional period and associations of legal entities» are given, and conclusions are made about significant gaps in such legislation, excluding a separate type of business partnership - public-private partnership. The structure of the Laws of Ukraine «On Public-Private Partnership» (2010) and «On Public-Private Partnership» (2025) was analyzed in the context of their substantive provisions. Approaches to the analysis of the effectiveness of the implementation of public-private partnership, established by legislation, were developed and their extrapolation to the entire sphere of business partnership was motivated. The formation of a separate regulation on business partnership, as well as the methodology of the effectiveness of business partnership as the basis of methodical support for the analysis of business partnership, is substantiated.

Keywords: regulatory and legal support; business partnership; analysis of business partnership; public-private partnership.

1. Introduction

Business partnership as a kind of cooperation between economic entities based on the pooling of resources to achieve common economic goals in modern conditions of limitations and economic uncertainty is one of the productive forms of cooperation in the economic life of any country. The issue of business partnership is especially relevant in modern domestic realities, when as a result of military actions taking place on the territory of Ukraine, many property objects are destroyed, which,

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in turn, requires consolidation of the efforts of various economic entities for their restoration and further successful use and exploitation. Not the last role in this is given to the state in the form of legislative and executive bodies through the implementation of the powers of the latter to form relevant regulations of domestic regulatory and legal support. It is this regulatory and legal provision that serves as the basis of the analysis of business partnership as the foundation of management of the latter.

2. Literature review

The problems of the implementation of the business partnership mechanism in the economic space have been studied at various times by such domestic scientists as: Pushkar O., Andryushchenko T., Shavlyuk A., Yaryga O., Yurchenko O., Nazarova K., Hotsulyak V., Tyukhtenko N., Struk N., Savchenko A., Parasiy-Vergunenko I., Shevchuk E. and others [1-10]. At the same time, the authors mastered the problems of the tools of such a mechanism in relation to various institutional sectors of the economy of Ukraine and the accounting and analytical support of such a mechanism

3. Identification of previously unresolved questions and formulation of study hypotheses

Paying tribute to the conducted studies of the predecessors, we note that the issues of regulatory and legal support of such a mechanism have not been considered despite the extreme importance of this issue both in the context of making managed decisions in the process of economic activity of economic entities in particular, and in the context of the harmonization of domestic legislation on the way to European integration in general. The working hypothesis of this publication is the thesis about the fundamental importance of normative and legal provision in the analysis of business partnership as the basis of its information provision.

4. Purpose, objectives and methods of the study

The purpose of the article is to study the regulatory and legal support for the implementation of the business partnership mechanism in general and in the context of cooperation between the state and business and the formation of proposals for its improvement.

In the process of carrying out the research, general scientific and specific methods of knowledge of phenomena and processes were applied in the context of the object-subject base of research, in particular: analysis and synthesis, induction and deduction, logical-structural, comparative analysis, generalization, modeling.

5. Results and discussions

The analysis of any type or direction of economic activity acts as the basic basis for the formation and adoption of scientifically based, and therefore balanced management steps. There is no exception to the analysis of business partnership in general and within the framework of cooperation between the state and business in particular.

A review of the existing legislation on business partnership shows the absolute absence of a systematic approach in the formation of the latter. Studying the large number of general and economic regulations of the law of Ukraine attests rather to the existence of continuous gaps in this matter.

The primary appeal to the main Law of Ukraine - the Constitution of Ukraine - reveals the established rights of economic entities to multi-vector activity and the protection of the rights of the latter in the process of such activity by the state, which can be interpreted as support for business partnership.

Turning to the regulations of the next level - Codes - reveals a set of problems of different levels. First, the Codes of Ukraine are in a state of being reformatted in accordance with the Order of the Cabinet of Ministers of Ukraine dated March 28, 2025 No. 300-r «On the approval of the plan of measures to implement the recommendations of the European Commission, presented in the Report on the progress of Ukraine within the framework of the 2024 European Union Enlargement Package». [11]. The latest regulatory document was adopted to implement the recommendations arising from the Report of the European Commission within the framework of the 2024 EU enlargement package [12]; it contains 389 measures within the framework of the activities of the Government of Ukraine on the way to European integration, the deadline for which is December 2026 [11]. Therefore, we must record the complete absence of information about the phenomenon of business partnership in the current Civil Code and isolated mentions of public-private partnership as a subtype of business partnership (in terms of the peculiarities of managing economic activity in the state sector of the economy, disclosure of information by state and communal unitary enterprises, business associations, interpretation of concession activities) in the no longer valid Economic Code (Article 22, 73, 78, 90, 406) [13, 14].

The development of the Tax Code shows that there are references to business partnerships, but in the tax context, according to which a partnership is considered «an association of two or more persons, created in accordance with the legislation of a foreign jurisdiction on the basis of or in accordance with an agreement to conduct activities for the purpose of obtaining profit or achieving another common goal» (Article 14) [15]. Also, the Tax Code enshrines rather fragmentary provisions regarding: uncontrolled operations of partners (Article 39), controlled foreign companies (Article 39-2), international automatic exchange of information and submission of reports on accountable accounts (Article 39-3), taxation of payments from formation without the status of a legal entity (Article 170), identification of costs for the acquisition of real estate (Article 172) [15].

In the context of the latest innovations in domestic legislation, the Law of Ukraine «On the peculiarities of regulating the activities of legal entities of individual organizational and legal forms in the transitional period and associations of legal entities», which was adopted at the beginning of 2025 instead of the Economic Code of Ukraine [16], needs to be emphasized. The following provisions regarding business partnership in the part of public-private partnership [16] are formalized by this Law:

- mandatory disclosure of information of state unitary enterprises in terms of information on operations and obligations of the specified economic entities arising as a result of public-private partnership (Art.9-2);
- mandatory publication of information on business companies, in the authorized capital of which more than 50% of the shares (parts) belong to the state in terms of information on operations and obligations of the specified business entities arising as a result of public-private partnership (art. 9-6);
- mandatory publication of information of communal unitary enterprises in terms of information on operations and obligations of the specified business entities arising as a result of public-private partnership (Article 60-2);
- final as amendments to other Laws of Ukraine, including the Law of Ukraine «On Public-Private Partnership» adopted in the future;

Finally, it is worth considering in detail the innovative Law of Ukraine «On Public-Private Partnership», which was adopted in mid-2025 instead of the Law of Ukraine «On Public-Private Partnership» from 2010 [17, 18]. A comparison of both laws shows a significant expansion of the positions of not only the thesaurus of this type of business partnership, but also the procedures: identification of a private partner, conclusion of a public-private partnership agreement, preparation and implementation of public-private partnership projects in certain sectors, control, monitoring and final evaluation of public-private partnership projects (table 1).

Table 1
Comparison of the structure of the Laws of Ukraine «On Public-Private Partnership» (2010) and «On Public-Private Partnership» (2025)

The structure of the Law of Ukraine «On Public-Private Partnership» (2010)			The structure of the Law of Ukraine «On Public-Private Partnership» (2025)		
section number	section name		section number	section name	
	article number	article title		article number	article title
I	GENERAL PROVISIONS		I	GENERAL PROVISIONS	
	1	Determination and Characteristics of Public-Private Partnership		1	Definitions of terms
	2	Legal Framework for Public-Private Partnership		2	Legal Framework for Public-Private Partnership
	3	Fundamental Principles for Public-Private Partnership Implementation		3	Characteristics and Fundamental Principles for Public-Private Partnership Implementation
	4	Spheres of Public-Private Partnership Application	4	Spheres of Public-Private Partnership Application	
II	IMPLEMENTATION FORMS AND OBJECTS OF PUBLIC-PRIVATE PARTNERSHIP		II	IMPLEMENTATION FORMS AND OBJECTS OF PUBLIC-PRIVATE PARTNERSHIP	
	5	Implementation Forms of Public-Private Partnership		5	Implementation Forms of Public-Private Partnership
	7	Objects of Public-Private Partnership		6	Objects of Public-Private Partnership
	8	Use of Land Parcels for Public-Private Partnership Implementation		7	Use of Land Parcels for Public-Private Partnership Implementation
	9	Sources for the Public-Private Partnership Funding		8	Sources for the Public-Private Partnership Funding
		9	Term of public-private partnership		
III	MAKING DECISION ON PUBLIC-PRIVATE PARTNERSHIP IMPLEMENTATION		III	MAKING DECISION ON PUBLIC-PRIVATE PARTNERSHIP IMPLEMENTATION	
	10	Proposals on Public-Private Partnership Implementation		10	Preparation of a public-private partnership project by a public partner
	11	Analysis of the Public-Private Partnership Implementation Efficiency		11	Analysis of the Public-Private Partnership Implementation Efficiency
	13	Decision-Making on the Public-Private Partnership Implementation	12	Decision-Making on the Public-Private Partnership Implementation	
IV	SELECTION OF THE PRIVATE PARTNER		IV	SELECTION OF THE PRIVATE PARTNER	
	14	Selection of the Private Partner		13	Principles of determining a private partner
				14	Permanent competition commission and competition commission for the public-private partnership project
				15	Independent experts
				16	Composition of tender documentation and changes to it
				17	Announcement of the competition
		15		Fundamentals of Conducting Tender for Selection of the Private Partner	18
			19	Qualification criteria and grounds for refusal to participate in the competition	
			20	Principles of conducting a call for proposals	
			21	Provision of a tender offer	
			22	Principles of evaluation of tender proposals	
	16		23	Evaluation of the technical part of calls for proposals	

		Publication of Information on the Results of the Tender for Selection of the Private Partner		24	Evaluation of the financial and commercial part of tenders
				25	Results of the contest
				26	Rejection of the tender offer
				27	Cancellation of the competition or recognition as having not taken place
	17	Publication of Information on the Results of the Tender for Selection of the Private Partner		28	Completion of the competition and negotiations on the conclusion of a public-private partnership agreement
				29	Appeal
				30	Peculiarities of participation in the competition of temporary associations of legal entities
				31	Advisor engagement
V	PUBLIC SUPPORT, PUBLIC GUARANTEES, AND PUBLIC CONTROL		V	PUBLIC-PRIVATE PARTNERSHIP AGREEMENT	
	18	Public Support of Public-Private Partnership Implementation		32	Conclusion of a public-private partnership agreement
	19	Dispute Resolution		33	Parties to the public-private partnership agreement
	20	Guarantees of the Rights of Private Partners		34	Terms of the public-private partnership agreement
	20-1	Bank accounts		35	The effect of the public-private partnership agreement
	21	Control over and Monitoring of Implementation of the Agreements Concluded under Public-Private Partnership and Final Assessment		36	Amendments to the public-private partnership agreement
				37	Liability of the parties to the public-private partnership agreement
	22	Powers of the Central Executive Authority in Charge of Shaping and Implementing State Policy in the Field of Public-Private Partnership		38	Termination of the public-private partnership agreement
				39	Private partner replacement
				40	Termination of the activity of the balance keeper, all the property of which was transferred under the public-private partnership agreement. Succession of a private partner
VI	FINAL AND TRANSITIONAL PROVISIONS		VI	APPLICABLE LAW AND DISPUTE RESOLUTION	
				41	Applicable law
				42	Dispute resolution
			VII	SUPPORT AND STATE GUARANTEES OF PUBLIC-PRIVATE PARTNERSHIP	
				43	Support for public-private partnership
				44	Article 44. Guarantees of the rights of private partners
				45	Bank accounts
				46	Guarantees of creditors' rights
			VIII	PECULIARITIES OF PREPARATION AND IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS IN CERTAIN AREAS	
				47	The object of public-private partnership in the project of public-private partnership regarding highways
				48	Peculiarities of the preparation of a public-private partnership project, the object of which is a road
				49	Peculiarities of the implementation of the public-private partnership project, the object of which is a road
				50	Tolls for road travel
				51	Payments under a public-private partnership agreement, the object of which is a road or elements (components) of the engineering arrangement of the road
				52	Peculiarities of preparation and implementation of public-private partnership projects on housing construction, public-private partnership projects on housing construction with a sub-threshold value
				53	Peculiarities of public-private partnership projects in markets that are in a state of natural monopoly
			IX	CONTROL, MONITORING AND FINAL EVALUATION OF PUBLIC-PRIVATE PARTNERSHIP PROJECTS	
				54	Control and monitoring of the implementation of public-private partnership agreements
				55	Final evaluation of public-private partnership
				56	Powers of the authorized body
			X	TRANSITIONAL PROVISIONS	
			XI	FINAL PROVISIONS	

The result of the analysis of the effectiveness of the public-private partnership must be one of the following conclusions: the expediency of making a decision on the implementation of a public-private partnership or a conclusion on the impracticality of making a decision on the implementation of a public-private partnership. The subjects of such an analysis should be the relevant institutions of the general public administration sector.

Elaboration of the specified positions from the analysis of the effectiveness of public-private partnership testify to their extreme importance in the initial decision-making on the initiation of the procedure of public-private partnership, and in general the Law of Ukraine «On Public-Private Partnership» - about the need to work out a similar regulation in the field of business partnership in Ukraine.

6. Conclusions and prospects for further research in this area

Business partnership, as a progressive form of cooperation between economic entities in conditions of limited resources and economic uncertainty, needs support from the state in general and in the part of public-private partnership in particular. The study of the updated legislation in the field of public-private partnership, formed on the basis of the relevant cluster of EU law, shows that the latter can become the basis for the formation of regulatory and legal support for business partnerships in Ukraine. At the same time, the formation of the methodology for analyzing the effectiveness of business partnerships under departmental subordination should be entrusted to the Ministry of Economy, Environment and Agriculture for the involvement of a specialized scientific community in such formation.

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