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Investment activity in the era of digitalization: economic-legal support and perspectives of procedural protection

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Abstract

Recently, digital technologies (blockchain, cyber-physical computing, big data, etc.) have been playing a significant role in the development of the world economy and society. Their rapid implementation changes traditional processes and affects the economic situation, investment climate, and the general development of the state and public services. Such changes affect investment activity, transform economic relations, and, therefore, there is a need to study the prospects for the development of economic and legal support of investment activities in the digital age. The work aims to study investment activities in the digital age. The subject of research is the analysis of patterns and general theoretical aspects of their development. The methodology consists of hermeneutic, system-structural, structural-functional, historical-legal, comparative-legal, and formal-logical methods. As a result of the study, the investment activity in the conditions of digitalization was analyzed through the prism of economic-legal support, and the nuances of the formation of the “digital” gap between developed countries and countries with developing economies.

Keywords: investment activity; digitalization; economic and legal support; digital economy; investment strategy.

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La actividad inversora en la era de la digitalización: sustento económico-jurídico y perspectivas de tutela procesal

Resumen

Recientemente, las tecnologías digitales (cadena de bloques, computación ciberfísica, big data, etc.) han jugado un papel importante en el desarrollo de la economía y la sociedad mundial. Su rápida implementación cambia los procesos tradicionales y afecta la situación económica, el clima de inversión y el desarrollo general del estado y los servicios públicos. Dichos cambios afectan la actividad de inversión, transforman las relaciones económicas y, por lo tanto, existe la necesidad de estudiar las perspectivas para el desarrollo del soporte económico y legal de las actividades de inversión en la era digital. El trabajo tiene como objetivo estudiar las actividades de inversión en la era digital. El tema de investigación es el análisis de patrones y aspectos teóricos generales de su desarrollo. La metodología consta de los métodos hermenéutico, sistémico-estructural, estructural-funcional, histórico-jurídico, comparativo-jurídico y lógico-formal. Como resultado del estudio, se analizó la actividad inversora en condiciones de digitalización a través del prisma del soporte económico-legal, y los matices de la formación de la brecha “digital” entre países desarrollados y países con economías en desarrollo.

Palabras clave: actividad inversora; digitalización; apoyo económico y jurídico; economía digital; estrategia de inversión.

Introduction

Modern digitalization processes require significant investments, especially digital and network and the latest technologies / tools for their application. The state of the Ukrainian economy and the matter of having a model of digital transformation raises the issue of attracting investment to ensure a permanent investment process that would cover all areas of innovation breakthrough and components of socio-economic development.

In current conditions of the development of public relations, digitalization changes informatization. Digitalization should be understood as a systematic approach to the use of digital technologies to increase productivity, the competitiveness of production and accelerate socio-economic development. That is, digitalization involves the creation of a digital system that can operate independently, has analytical and predictive functions, and solves problems independently.

More and more research is being given to the “digital economy”, which is seen as a system of social, economic, and technological relations between the state, business community, and citizens and that operates in the global information space through the widespread use of digital network technologies that lead to continuous innovation change to increase the efficiency of socio-economic processes. The digital economy can be considered as a separate segment of the economy, which is a set of investments to increase the efficiency of existing business processes through the development and implementation of new technological solutions and the development of current technologies; opportunity for businesses to invest in IT to reduce the cost of their products and develop their portfolio of proposals.

In this context, investment trends that directly or indirectly affect digitalization play an essential role. This circumstance testifies the need to develop and implement a comprehensive framework investment policy for the digital economy, taking into account the digital development strategies of individual countries and companies. Therefore, this paper is about investing in digital transformation as a key to the fruitful integration of developing economies into the global economy and helping reduce the digital divide and meet investment needs. But to properly ensure the implementation of investment activities, there must be effective instruments of economic-legal support. Given this, in this paper, much attention is paid to the problematic issues of economic and legal support of innovation and development prospects.

Having identified digital transformation as one of its priority areas, Ukraine has already made great strides in the operation of ProZorro systems and the launch of electronic services in the public and private sectors. But to date, the government does not understand how much money should be spent on digitization, and when it comes to the benefits of the transition to such digital services, at least the goal is to move away from domestic corruption and make people’s lives easier (Nazarova, 2019).

Given the importance of digital transformation, it is equally important to create and ensure the effective functioning of a clear legal mechanism for regulating economic relations that arise and develop in the field of innovation, and, therefore, it is appropriate to further study the economic activities in this area, their legal regulation and formulation proposals for its further improvement under everyday conditions of digitalization of the economy.

1. Theoretical Framework or Literature Review

Even though investment activity in the era of digitalization at this stage is not a widely studied topic, some issues of investment activities are devoted to many scientific papers, articles, and monographs.

In particular, Androschuk (2017), Atamanova (2009), Budarna (2017), Vinnyk (2009) Vrublevska (2016), Glibko and Strizhkova (2019), Ivanova (2014), Korneeva (2018), Kudryavtseva (2020), Kukhar (2008), Lyubimov (2010), Ostapenko (2021), Podtserkovny (2013), Poedynok (2013), Fedulova (2020), and Sosnin (2020) studied certain aspects of investment activity.

Problems and prospects of innovative economic development in the context of Ukraine's integration into the European Research and Innovation Space have become the subject of research by Androschuk (2017). The author comments that for the expansion of innovation in Ukraine it is required, first of all, to create an effective institutional environment that will ensure economic growth, talent development, and increase human evolution. The researcher is convinced that Ukraine has a high educational and scientific potential, capable of producing various innovations in the form of ideas, scientific results, patents, but it has a weak mechanism for their implementation in economic activity.

In this regard, first of all, it is necessary to develop an effective mechanism for implementing the results of innovation and create a compelling institutional environment that will ensure the evolution of talent and raise the level of human development. All this should ensure a further increase in living standards. The reorientation to a high-tech way of further growth is an unalterable one for Ukraine. At the same time, the state must rely on high-quality human capital, including a high level of research and patent activity is a major but not sufficient condition for the development of the country's innovative economy.

Problematic issues of systemic economic and legal regulation of relations in the innovation sphere have become the subject of research Atamanova (2009).

Legal means of forming the investment potential of Ukraine were studied in detail by Budarna (2017). The researcher remarks that despite all the complexity of legal regulation of investment activities and, moreover, the investment policy of the state, the fact remains undisputed that the prerequisite for investment relations should be the prior accumulation of the necessary investment potential, which, under certain conditions, should take the form - investing. Also, the author noted that the peculiarity of the modern system of legal regulation to reproduce the investment potential of the country is to supplement the general principles of economic-

legal support of investment activities in the country as a whole and the relationship with economic interests.

Given this, the legal support for the formation of investment potential of countries involves the definition of: sources of investment resources for investment and technological problems; mechanism of accumulation of investment resources from various sources; the process of distribution of generated and attracted capital by the most efficient activities, taking into account real buys; the mechanism for ensuring the efficient use of asset resources, and; the mechanism for compensation of possible investment losses. In turn, among the tax tools that should encourage businesses to self-investment, the researcher called regressive taxation and investment tax credit.

Problems of economic-legal support of innovative investment have become the subject of research by Vrublevska (2016). Glibko and Strizhkova (2019) investigated the legal provision of virtualization of the infrastructure of the national economy of Ukraine.

Ivanova's article (2014) summarizes theoretical approaches and develops practical recommendations for investment support for the implementation of an innovative model of Ukraine's economy based on existing experience in the world. The author notes that the state policy in establishing a model of innovative development of the country should be based on investment mechanisms of an innovative nature.

The state sets priorities for innovation and investment development and financially supports strategic areas of structural change at the macro and regional levels. By solving the problem, the researcher sees the improvement of the investment climate, development of the investment market and investment infrastructure, creation of effective mechanisms of public-private partnership in infrastructure investment, development of a system of preparation of programs and projects for public investment.

The role of the state in promoting investment in the digital economy was surveyed by Korneeva (2018).

Kudryavtseva work (2020) is devoted to the study of problems arising from the lack of legislation on investment security of the state, which is part of the national economic security of the country as a whole and is to systematically prevent threats of a critical shortage of investment resources through the creation and state support the relevant legal investment procedure.

In the dissertation Kukhar (2008) drew attention to the fact that the task of the state is to ensure efficient and stable functioning of the investment market and involves its activities in certain areas, including: investment policy, including its economic, legal, legislative and organizational components,

by developing and adopting the Strategy and State programs of investment development of the country; implementation of investment policy by establishing and ensuring the legal investment order; implementation of investment policy through the implementation of state regulation of investment activities through legal means aimed at minimizing investment risks and maximizing the transparency of property status of participants in investment relations; implementation of investment policy through state support of investment activities; implementation of investment policy by the state as a participant in investment relations; implementation of investment policy by carrying out activities as an investment entity, in particular, joint investment activities, as well as a recipient of private and foreign public investment in their own objects of public investment.

Lyubimov (2010) singled out the concept and criteria of investment security in his work.

Ostapenko (2021) devoted her attention to the study of the processes of systematization and the need for meaningful modernization of the economic legislation of Ukraine. The researcher considered the history of the modern economic legislation of Ukraine and studied its comparative legal aspects. The paper establishes that the formation of national economic legislation should be determined by the content of a coherent and socially acceptable scientific concept of the national model of market economy in current conditions. The lack of such a state-approved program concept is one of the main factors in the chaotic and reactive nature of economic legislation, which in turn, there is a loss of systemic and effective legislative consolidation of economic relations both in the norms of the Basic Law and in the norms of economic and related branches of legislation of Ukraine.

Foreign trends in the development of legislation and science of economic law in his work described Podtserkovny (2013). Poedynok (2013) considered investment activity as a type of economic activity and justified the need to consider investment activity in a broad and narrow sense.

The task is to identify and substantiate global trends in investing in digitalization and the formation of the digital economy, to reveal the compliance of Ukraine's economy with these processes and relevant challenges; to develop proposals for deepening investment policy for the digital transformation of socio-economic development put Fedulova (2020). Another scholar, Sosnin (2020), studied the phenomenon of digitalization as a new reality in Ukraine.

2. Methodology

During the study, general theoretical and special scientific methods were used, namely: hermeneutic, system-structural, structural-functional, historical-legal, comparative-legal, and formal-logical.

Thanks to the hermeneutic method, the peculiarities of the interpretation of the law in the study of investment activity were studied. Given that the hermeneutic method of interpreting the rule of law is the tool that can be used to solve the problem of double meaning, through hermeneutic analysis of the law, the problematic aspects of the legal regulation of investment have been clarified. In particular, the use of the hermeneutic method involved the analysis of the text through the division into *subtilitas intelligendi* (understanding), *subtilitas explicandi* (interpretation) and *subtilitas applicandi* (application).

Through understanding, it has become possible to understand the rules of law expressed through signs transmitted by the legislator and perceived by the investor, central executive bodies, etc. through external written expression. The concept of *subtilitas* in the hermeneutic method can be translated as “subtlety, dexterity, art”, according to traditional hermeneutics, these procedures were considered not so much as the methods we use, but certain skills that require special spiritual sophistication.

Unfortunately, in practice, there is a paradoxical situation when the legislator seeks unambiguous text, the highest judicial bodies of the state are interested in ensuring uniform interpretation of the law, and the law enforcer tries to use its ambiguities (errors, gaps, etc.) to his advantage, often substituting the content of the law for his interpretation.

There is a conflict of interpretations between the legislator and the law enforcer. Simultaneously, the interpretation leads to an increase in possible options for understanding the rule of law. The variety of options provides ample opportunities not only to abstractly clarify the meaning of the legislative rule but also to identify the interests behind the norm and the goals of the legislator. Each of the described problems has an individual character, and therefore, solving it, it is necessary to establish all the factors influencing such a decision.

The study of problematic issues of investment in the digital age has become possible through the use of the system-structural method. With the help of the tools of this method, investment activity was studied as a whole set of elements in the set of relations and connections between them, i.e., considered as a system.

Such a method as structural-functional allowed to study investment activities in the period of digital transformation through the structural dismemberment of the holistic phenomenon of “investment”, where each

element of the structure has a specific functional purpose. Through the two main approaches of this method - structural-functional, the functions of investment activities and the structures that perform these functions were clarified.

The chronology of the development of investment activity and its vectors, including investments in the period of digitalization and legal regulation of the researched activity were surveyed using the historical-legal method.

The comparative-legal method allowed to compare different conditions in which investment activities are carried out, including the legal realities of different countries in order to identify similar or different features between investing in the context of digitalization, as well as the terms that denote them. This method contributed to the accumulation of empirical knowledge.

Various formal-logical methods were utilized for in-depth study of the subject. For example, the method of analysis was used to analyze the components of digitalization and features of investment activities in such conditions. The synthesis made it possible to combine the selected elements into a single whole. The generalization helped to highlight the general features of investment activity and draw conclusions on the ways of development of investment activity in the conditions of digitalization.

3. Results and Discussion

Before considering the problematic aspects of economic and legal support of investment activities in the digital age, we will define the key concepts: investment activities, public investment policy, etc.

Article 12 of the Economic Code of Ukraine (hereinafter - the EC of Ukraine) stipulates that the state uses various means and mechanisms to regulate economic activity to implement economic policy, implement targeted economic and other programs and programs of economic development. However, the EC of Ukraine does not contain definitions of economic policy and state regulation of economic relations. Although, the text of Art. 9 of the EC of Ukraine contains meaningful provisions on the differentiation of economic policy into economic strategy and economic tactics, and the legal consolidation of economic policy conditions in legislation in the form of programs of the Cabinet of Ministers of Ukraine, targeted economic development programs, etc. (Law 436-IV, 2003).

The Law of Ukraine "On National Security of Ukraine" establishes the definition of "national security of Ukraine" and among the principles of state policy in the field of national security and defense highlights military, foreign policy, state, economic, information, environmental security, etc., and, among the main areas of state policy, National Security of Ukraine (in

the economic sphere) highlights only the improvement of the investment climate, increasing the efficiency of investment processes (Law 2469-VIII, 2018).

Regarding the definition of investment activity, the provisions of the Law of Ukraine “On Investment Activity” allow us to conclude that the legislator includes in the content of investment activities various actions of the subjects of this activity (primarily investors), which are carried out at different stages of the investment process - from the decision to invest to the termination of investment activities in general (Law 1560-XI, 1991). However, this law does not specify that investment activity is an economic activity.

According to scientists, state investment policy is a systematic and purposeful activity of certain state bodies to create and implement a special algorithm of measures for the development of the investment market or its segments through the formation of regulatory support for investment relations, application of the necessary means of their state regulation and direct participation of the state as a subject of these relations, based on the agreed model of such a market, which is enshrined in the State Investment Development Program.

The investment market is the object of state investment policy and is a system of socio-economic relations aimed at ensuring the process of reproducing competitive production of goods and services through the mechanism of meeting investment demand through investment supply of relevant investment goods formed in the process of accumulating investment potential.

A crucial component of the state investment policy is the legal investment policy, which is also part of the general legal policy of the state. Due to its implementation, the law-making process is organized to determine the priorities of legal regulation and the system of basic legal means, mechanisms, and regimes in order to establish the optimal legal investment order.

The legal investment policy of the state is formed and implemented under the condition of the existence of a number of economic and legal imperatives, including:

- Obligatory and permanent existence of legal investment policy in the state.
- Ensuring the functioning of legal investment policy mechanisms of legal liability for violation of the order of its formation and implementation.
- Investment pluralism in all segments of the investment market, the priority of innovative investment, etc. (Kukhar, 2008).

The next concept is “investment”. It is used at different levels of management:

- At the international level – investments in the world infrastructure and economy of international and regional unions (associations).
- At the state level – investment in the economy at the national level; at the regional and local levels – investments in the economy of the region, local communities, etc.
- At the enterprise - investment in machinery, equipment, real estate, R & D, development of staff and specific employees; purchase of shares, bonds, etc; at the household level also talk about investment, when buying durables, expensive jewelry, works of art, education and training, etc. (Bryukhovetskaya and Buleev, 2019).

Today, the world is actively implementing information strategies “government-business” and “society-business”. The policy aimed at encouraging public administrations to implement modern information and communication technologies, per the implementation of the digital development strategy under the “government-business” scheme (government-to-business) extends to such areas as: creating or promoting e-government services for individuals and companies and improving the work of governments by increasing transparency and accessibility of information.

An important achievement of the government’s transition to the use of modern digital technologies is the implementation of the concept of “government-to-society”. To increase public confidence in government action, it is necessary to increase the transparency of state institutions through the introduction of open databases of government operations. Improving public and business access to information will have an extremely positive impact on investment sentiment, improve the investment climate in the country, as transparency and clarity have always attracted the attention of investors.

The main digital tools for promoting investment that can be used by the state are information online portals and online windows, which will provide investors with all the necessary information and free access to rules and regulations on the regulatory system and legal framework, which will increase the transparency of investment activities in the country, as well as simplify access to administrative procedures and increase the efficiency of administrative services for investors.

The practical implementation of the digital transformation of investment policy requires the creation of appropriate institutional conditions that will allow enjoying the benefits of digital development. Undoubtedly, the advantages of digital development, which have a significant impact on

investment activities, include the emergence of new financial instruments and channels of financial services, increasing the speed of operations, reducing transaction costs, overcoming information asymmetry, and more. In this context, it is noteworthy to ensure the gradual transformation of the investment regulation system to the requirements of the digital economy (Korneeva, 2018).

Therefore, an important component of economic development is to stimulate investment in digitalization. To do this, in the field of investment activities to ensure the support of investment projects requires:

- formation of general rules for the creation and evaluation of special investment regimes:
 - a list of new approaches to obtaining tax benefits,
 - reduction of insurance premiums for both private investors and investment companies implementing various projects;
- development of specific measures of state support in one of the following forms:
 - providing benefits for project financing;
 - providing benefits for the payment of property tax and land tax;
 - compensation of the investor's investments due to various tax revenues from the investment project,
 - stabilization of regulatory and tax conditions.

Regarding the existing situation, official statistics record the introduction of the web, cloud technologies, big data with varying intensity in enterprises of the Ukrainian economy. However, statistics show extremely disappointing results regarding investment in Ukraine:

1. a significant decrease in foreign direct investment (equity) in the economy of Ukraine in 2017 (31230.3 million dollars) compared to 2016 (32122.5 million dollars);
2. in terms of economic activities, the share in "Information and Communication" in 2017 was only 5.5%, in "Professional, scientific and technical activities" - 5.9% (Table 1);
3. in terms of sources of financing capital investments in the economy of Ukraine, own funds of enterprises and organizations account for the largest share, which is also almost stable in dynamics, which does not allow to talk about opportunities for economic growth, especially digital;

4. there is a decrease in the already low share of foreign investors (Fedulova 2020).

Conclusions

1. Investment and digital transformation in today's conditions of social relations are a whole, because the development of digitalization of economic processes is impossible without investment, and the most effective investment tools are directly related to the digital economy.
2. The state must take various measures to attract investors, placing a key focus on private investment, which will allow for comprehensive measures to develop the digital economy and make noticeable positive changes in the country's economy.
3. In the face of global challenges, the latest technologies in the difficult times of the world economy and society can be a driver of critical problems and encourage investors to reshape investments in priority areas, which today are digital technologies. However, for such re-profiling, there must be an appropriate legal framework and mechanisms that can effectively ensure the implementation of such economic activities.

Further research will be focused on the study of investment support mechanisms.

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