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The problems of legal regulation of the investment agreement in the subsoil in the Republic of Kazakhstan

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Abstract

For the Republic of Kazakhstan, as a newly independent state, which became the path of integration into the world economy and in the transition to an open market economy is crucial to attract foreign and domestic investment. Under current conditions, the development and implementation of investment activity increases markedly. Investment is the legal basis for the development of many countries, including Kazakhstan, as an objective of socially necessity, the underlying material and spiritual wealth of human, for the development and improvement of living standards in the individual states and the international community as a whole. Significant global reserves of mineral resources available in the Republic of Kazakhstan, the country's entry into active foreign economic relations are a prerequisite for the recognition of Kazakhstan as one of the major players in the international market of raw materials, particularly hydrocarbon.

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1. Introduction

According to the Law of the Republic of Kazakhstan "On investments" investment contract is an investment agreement, providing for investment preferences. Since the investment activity is defined as the contribution to profit, the main legal document of the investment is the agreement (contract) regulated the production and business and other relationships of the investment activity.

Some scientist consider an investment agreement in the narrow sense, it means that it is focusing on the notion of

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contract in the construction industry. So, for example, Ms Vosnesenskaya also notes a number of specific features of this type of agreement [1].

- 1) The subject of this agreement is a sovereign state and private foreign person ;
- 2) The object of the agreement is the property relation within the one national territory, and these relationships are built on the basis of a kind of equivalence, and not on the basis of power and subordination;
- 3) The agreement is governed by the national law of the State of the recipient, but with a caveat to grant private investors the so-called long-term permanent legal status, which means that the non-use to it new, issued after the agreement of the laws, if their conditions are disadvantageous to the investor ;
- 4) The agreement is based on a special government approval, request specific investor specific legal regime, and the basic conditions, which are usually contained in the investment legislation.

These authors examine the actual investment relations - relationship between the main participants of the investment activities as a single investment agreement, the parties that are an investor, customer, user object, the main performer works. This agreement regulates the process of implementation of the investment project. At the same time, the authors point out that in the process of implementation of the investment project may not be a single investment contract.

Thus, it should be noted that the investment contract has a plurality of species. This is due to the fact that investing can be implemented in any of the objects of civil rights, and the important thing is that they are used in the production of a broad sense, and do not lose their value in the current final consumption.

According to the position of V. Popondopulo, "investment contracts» –is a collective term. Investment activity may be mediated by various civil contracts: purchase, lease, contract, a partnership, etc. Under the investment agreement called the author means "agreement, which defines the terms of the relationship of the investor and the other participants of the investment process over the size of invested funds of the order of investment, interaction between the participants of the investment process in the implementation of the investment project, the order of use of the object of investment property relations to the created object, the distribution of income from the operation of the facility, etc. In turn, the action for the implementation of the investment agreement mediated by other treaties: the transfer of the property to perform work, to provide services, licensing, etc [2].

The above proves that drawing several agreements, which will be an investment agreement, at the same time, pursuant to an investment agreement may be entered into a number of other contracts may conclude the investment agreement. Pending determination of the investment agreement and suggest that the investment agreement as a whole governs the investment activities of the investment project.

2. The legal regulation of the investment agreement in the subsoil in the Republic of Kazakhstan

Nowadays, the investment contract is a special type of contract that is not covered by civil law as a separate contract, but concluded in accordance with the general provisions and requirements of the contract provided for under Chapters 23 and 24 of the Civil Code of the Republic of Kazakhstan. It should be noted that the investment agreement defines the relationship of the owners or holders of title of funds invested in the business objects and their interaction in the process of implementation of the investment project, the use of it or the operation of the facility in the distribution of income from the activity or operation of the facility, and establishes the right of ownership of the object. Essence of all activities organizer investment limited implementation of the investment project and the subsequent transfer of the created object of investment. By signing the contract, the investor expects to receive income from the investment of funds; the source of income will be as entrepreneurial as well as any other income-generating activities [3].

The essential terms of the contract in accordance with paragraph 1 of 393 Article of the Civil Code of the Republic of Kazakhstan are the conditions: the subject of the contract, the terms of which are considered essential by law or required for contracts of this kind, as well as all of the conditions on which if any one of the parties to the agreement must be reached. In this case, the contract cannot be concluded without reaching an agreement on all essential terms.

The distinctive features of the investment agreement are as follows:

- 1) An investment project of organizer investment is the basis of conclusion of contract;
- 2) Long-term contracts;
- 3) Reciprocal agreement (provision of investment going on in exchange for the future of the investee);
- 4) Commercial interest parties to the contract (the investor is obliged to compensate the organizer of investing

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