

The Tools for Choosing the Optimal Business Legal Structure of a PPP Project in Industry

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Abstract— The article presents peculiarities of projects implementation and opportunities of the Public Private Partnership in industry. The tools for choosing the optimal business legal structure of the PPP project implementation is offered.

Keywords— *industry, Public Private Partnership, model*

I. INTRODUCTION

In the last couple of decades, all kinds of models of the Public Private Partnership in various sectors of the economy are spreading ever more widely. During the financial and economic difficulties, the introduction of all new sanctions against Russia and general transition to import substitution, investment projects based on Public Private Partnership have some special meaning. Many developing and developed countries base their anti-crisis programs on developing the industrial sector, because industry is the foundation of any economy.

Public Private Partnership is a new development mechanism in the Russian economy, the importance of which is increasing year by year. To attract private capital, management experience and advanced technologies to solve social and economic goals and objectives, the state needs a special economic, organizational and legal mechanism that would create and support investors' interest in such cooperation, reduce overall costs and production risks and increase guarantees of the project success.

II. PECULIARITIES OF USING THE MECHANISM OF THE PUBLIC PRIVATE PARTNERSHIP IN THE INDUSTRIAL SECTOR OF THE RUSSIAN ECONOMY

At present, the greatest need for investment resources is experienced by industrial enterprises, whose organizational and economic state requires fundamental changes. These circumstances justify the need to search for effective mechanisms for mobilizing large-scale and long-term investment resources for the development of new forms of financing and transformation of industrial enterprises.

The cooperation of business and government in the industrial sphere is quite a new phenomenon in the Russian economic reality. In the changed economic situation, all attention is paid to additional ways of raising funds to create new jobs and preserve old ones, complete projects started and

increase the efficiency of capital investments in the leading sectors of the economy, mainly in industry. One of the main tools to solve these problems should be Public Private Partnership, when the state acts as a strategic partner of private business.

The transition to the model of Public Private Partnership can improve the economic situation of an industrial enterprise by attracting some additional sources of income, optimizing costs and creating conditions for scientific and technical development in the industry. The most common form of classical interaction of the state and business in the sphere of industry in Russia is a state contract, under which private companies can perform work and provide services to meet the state's needs, prescribed in the expenditure of its budget [2]. One more common form of partnership between business and government is joint ventures, the founders of which are enterprises with public ownership and private enterprises.

Factors influencing the use of the PPP mechanism in industry

On the basis of the analysis of the literature [1-6], it is possible to single out a number of factors influencing the use of the PPP mechanism in industry:

1. Regulatory framework.

To form the possibility of using PPP mechanisms in industry, it is necessary to rely on the regulatory framework that takes into account the development strategy of the Russian Federation and the interests of all industrial subjects of the Russian Federation.

2. Tools for the institutional environment of PPPs.

Under the institutional environment of the Public Private Partnership, it is reasonable to understand the set of formal and informal rules for combining the material and non-material resources of the state, local government and the private sector on a mutually beneficial contractual basis for creating public goods or providing socially significant services in various industrial and social sectors, as well as coercive measures for their execution. The role of the state is to regulate economic relations at the institutional level and form some favorable institutional environment.

3. Community of interests of the state and business.

Another important element for the formation of the PPP mechanism in industry is the maintenance of a balance

between the interests of the state and business within the framework of some form of PPP.

The basic forms of creating objects in the sphere of industry

The need to use the mechanism of Public Private Partnership for the development of the industrial complex is identified and presented in a number of state programs of the Russian Federation and regulatory and legal acts on the industrial development.

The advantages of the Public Private Partnership are provided not only by the possibility of attracting private investors' funds, but rather by the possibility of aggregate risk reduction for project participants and application of their unique competencies in the project [8, 9, etc.]. The state, implementing the PPP project with private business, receives not only budgetary efficiency in the form of reducing the burden on the budget, but a flexible project management system, and private business in its turn receives a certain set of guarantees and benefits.

Today, the main forms of creating facilities in the industry are special investment contracts (SPIC), offset contracts and PPP/MPP agreements.

The object of the Public Private Partnership in industry may be a property complex intended for the production of industrial products and (or) other activities in the sphere of industry.

In accordance with paragraph 2 of Art. 132 of the Civil Code of the Russian Federation all types of property intended for the enterprise activity belong to its property complex.

While considering the classical forms of PPP, it should be borne in mind that property complexes intended for the production of industrial products and (or) the implementation of other activities in the sphere of industry as an object of the agreement are provided for in Federal Law No. 224, which expanded the list of PPP facilities on July 3, 2016 by including objects in the sphere of industry. It was planned that the innovations in the legislation would allow:

- modernize the industrial fund;
- ensure some additional tax revenues to the budget;
- "reduce the presence" of the state in the economy, in general.

However, to date, there are practically no examples of running PPP projects in the sphere of industry. At the same time, a significant number of state-owned industrial facilities continue to remain in decline (herewith, it retains the potential for return to production in a case of reconstruction and modernization).

A comparative analysis of significant characteristics of the main legal forms of creating objects in the sphere of industry has been carried out [7].

Conceptual approach to the formation of PPP projects

The need of the industrial sector in investment resources, as well as the high efficiency of projects based on Public Private Partnership, require the creation of a list of projects that could be implemented using Public Private Partnership

mechanisms. A conceptual approach to the formation of PPP projects in industry is presented in Figure 1.

It is based on the system of interaction between the state and the private sector of the economy, arising in the process of organizing and supporting PPP projects in the industrial sector and based on the balance of interests of all economic agents.

The developed conceptual approach presents PPP projects in the industry as the organization of the process of implementing joint socially significant projects on the basis of compulsory observance of the principle of competition, which ensures involvement of the private sector for more efficient and high-quality execution of state tasks in the industrial sphere.

Formation of PPP projects in industry implies attracting private business to the industrial complex for more efficient execution of state functions in this sphere.

Public Private Partnerships in Russia developed according to schemes that have variants of risk sharing and return of investments, which do not always coincide with international practices of similar design forms.

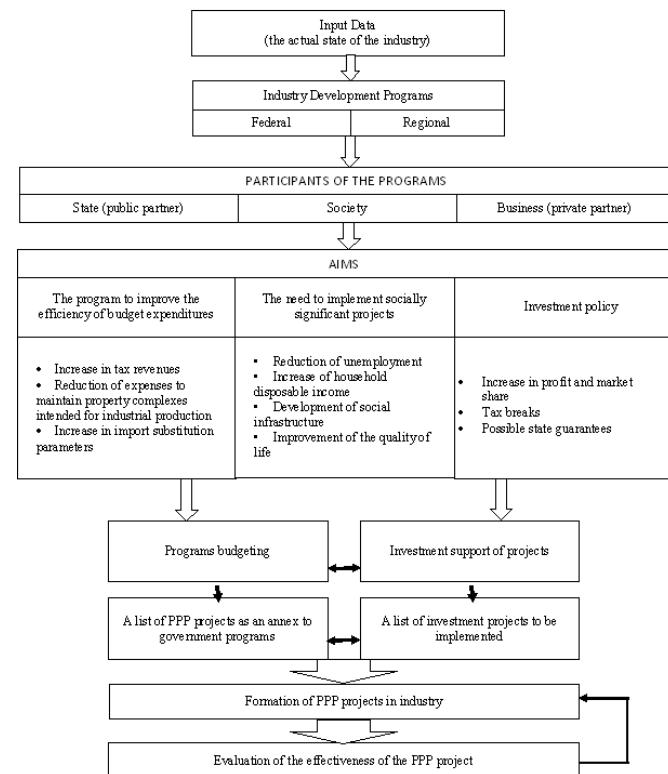


Figure 1. A conceptual approach to the formation of PPP projects in industry

The risk profile determines the choice of the funding model. The parties can assume most risks without limitations, by agreement. It is assumed that during the implementation of major Public Private Partnership projects, a risk sharing framework can be proposed (Table 1).

TABLE 1. EXAMPLE OF RISK PROFILE BETWEEN THE STATE AND BUSINESS IN THE SPHERE OF PPP

Risks	Risk profile		
	Investor	Investor and state	State
Project errors	+	-	-
Land grant	-	-	+
Obtaining licenses and permits	+	-	-
Risks of construction	+	-	-
Hidden barriers	-	+	-
Commissioning	+	-	-
Operation risk	+	-	-
Public actions connected with introduction or increase of fees	-	-	+
Political risks	-	-	+
Currency risks and inflation risk	-	+	-

When implementing PPP projects, as a rule, the following risks are discussed:

- risks, depending on the circumstances, the investor of the project is not responsible for and which are beyond the control, are accepted by the state. In this case, insurance, if it is available in respect of the risk, is usually performed at the expense of the sponsor.

- risks associated with the economic side of the project and its attractiveness to the market are accepted by the investor. In a number of situations, the state provides guarantees for purchases of products, supplies of raw materials, hurdle rate, etc., as well as compensation in the case of a pre-schedule stoppage of the project in circumstances related to the sphere of state control.

- construction and operational risks are respectively delegated by the investor to contractors.

In general, we can identify the following problems of PPP formation and development in Russia, including those in the industrial sphere:

1) Problems and contradictions in the regulatory framework related to the process of regulation and implementation of the PPP mechanism. There are no industrial objects in the list of objects to which 115-FZ can be applied, although there are examples of projects in the industrial sector of the economy, the implementation of which involves state ownership (for example, projects in the military-industrial complex).

2) Lack of a system of choosing the legal form for the implementation of Public Private Partnership projects in the industrial sector of the economy.

3) Little experience of practical implementation and imperfection of the institution of partnership between the state and business, in comparison with countries with developed PPP system.

4) Lack of an integrated approach. The development of the PPP problem is not systemic in the country. The task is complex and institutional and must be solved on the basis of a systematic approach. At present, many different organizations are involved in the sphere of lawmaking:

committees of the legislative power, ministries and public services, research institutions, funds and private individuals.

5) Absence of a unified project management system for PPPs, including the relevant infrastructure and regulatory framework. In this regard, there are difficulties and contradictions in the issue of interagency cooperation.

6) Lack of professional staff.

Thus, the key actions necessary to overcome these barriers are:

- expanding the list of objects presented in 115-FZ with the aim of increasing the potential for PPP development in the industry of the Russian Federation;

- development and approbation of tools for the selection of the optimal business and legal structure for projects implementation in the industrial sector of the national economy;

- determining conditions and selection criteria for investment projects facilitating the implementation of Public Private Partnership projects;

- preparing recommendations defining conditions, target criteria, typical mutual obligations and typical contracts on Public Private Partnership.

To ensure the effective implementation of Public Private Partnership projects in the field of investment, attention should be paid to the creation of a number of mandatory common premises:

- ensuring an integrated approach to overcoming these barriers and creating a unified PPP project management system, including regulatory support and related infrastructure;

- ensuring macroeconomic stability and stimulating the development of the market environment;

- the government authorities' use of world experience and knowledge for training specialists for work in the field of Public Private Partnership;

- creation of favorable public opinion for transferring the functions of owning and using state and municipal property to the private sector, ensuring public confidence in this type of economic relations, new for modern Russia, and ensuring business transparency.

III. TOOLS FOR CHOOSING THE BUSINESS LEGAL STRUCTURE OF PROJECT IMPLEMENTATION

As it was mentioned before, the main legal forms of creating objects in the sphere of industry are:

- special investment contracts (SPIC);
- offset contracts;
- PPP/MPP agreements.

To increase the efficiency of making decisions on the implementation of projects in the industrial sphere, the author suggests developing some tools for choosing the optimal business legal structure of the project in the form of a model.

To develop it, a conceptual presentation of the process of selecting the project form. Figure 2 presents a conceptual model of the process of selecting the optimal business legal structure of the project.

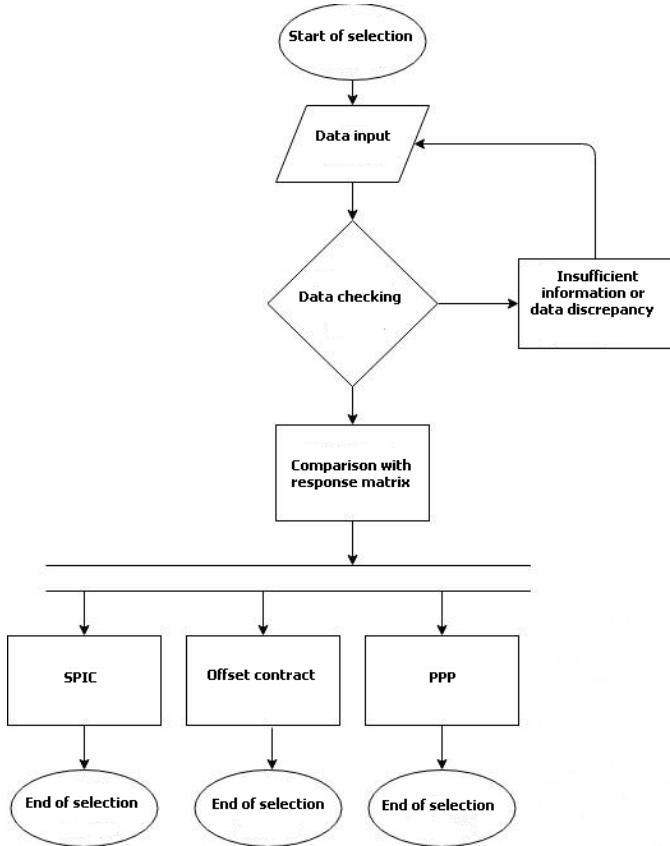


Figure 2. A conceptual model of selecting the business legal structure of the PPP project

When developing the model, the author identifies key parameters that influence the choice of the optimal business and legal structure of the project, which include:

- the investor;
- the investor's liabilities;
- the public side;
- the public side's liabilities;
- object ownership;
- the possibility of attracting other persons;
- the project implementation period;
- sources of financing;
- whether performance evaluation is required;
- guarantees for the purchase of goods;
- protection from changes in legal regulation;
- tax guarantees;
- investment size;
- the need for a competition.

Using the above parameters and the conceptual model of the choice of the business and legal structure of the project, the author developed *a model for choosing the optimal business and legal structure of the project* (Figure 3).

IV. APPROBATION OF THE DEVELOPED TOOLS

Approbation of the developed model of choosing the optimal business and legal structure for the implementation of the PPP project in the industrial sphere was carried out with the help of a survey among the profile specialists of St. Petersburg enterprises taking an active part in the implementation of industrial initiatives, as well as among civil servants of the profile committees of the Administration of St. Petersburg.

Based on the data obtained, it can be concluded that the majority of respondents believe that the effect of the development and implementation of the proposed model will be positive. Moreover, the majority of the respondents believe that the application of this model will improve the quality of the choice and save time for choosing the legal form of the implemented infrastructure project in the industrial sector.

A more detailed calculation of time savings and improvement of qualitative parameters of the choice can be made only after the practical implementation of this model in the mechanism for assessing the effectiveness of Public Private Partnership projects.

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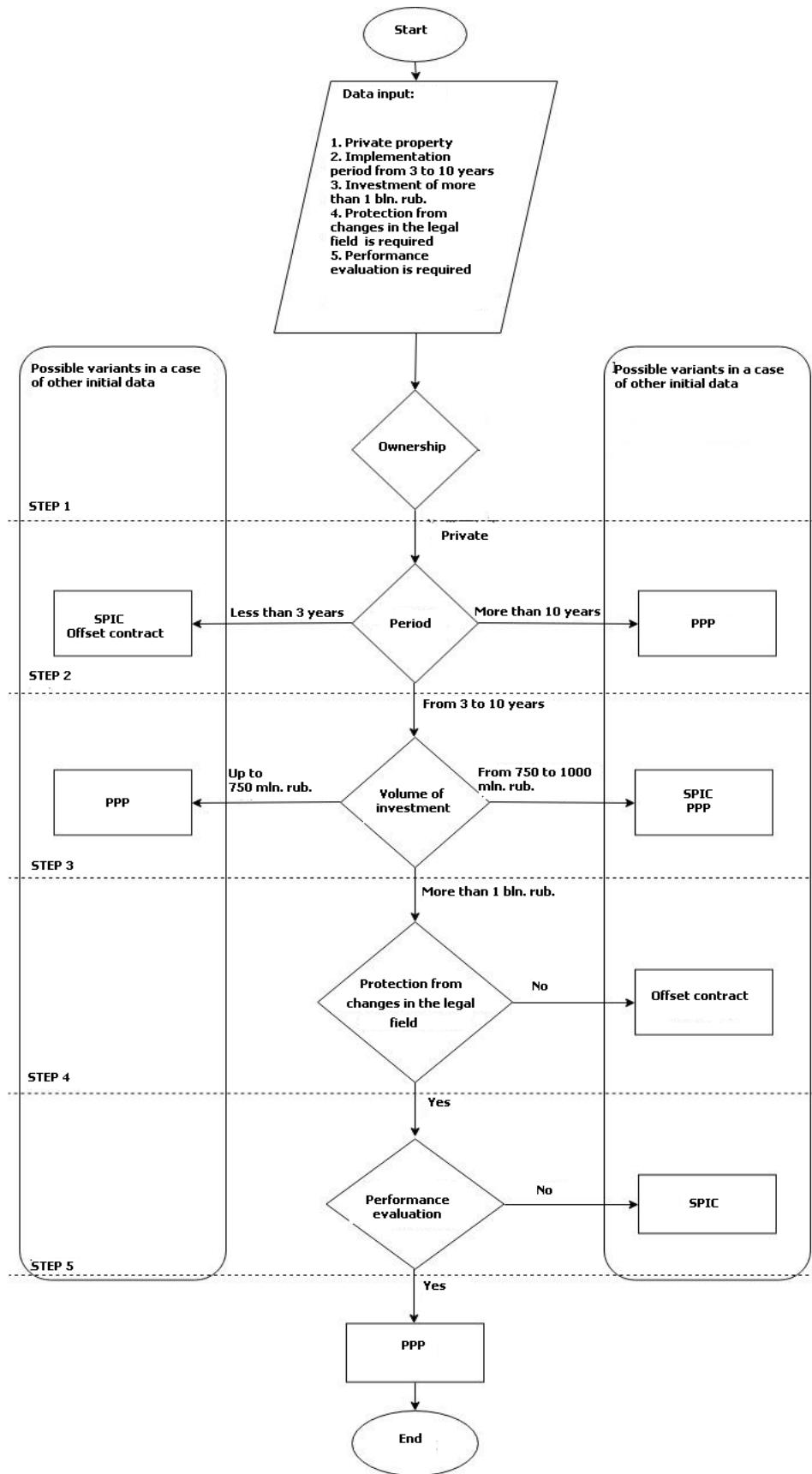


Figure 3. The model of choosing the optimal business and legal structure of the PPP project in industry