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## RESEARCH OF THE FOREIGN COUNTRIES EXPERIENCE IN REGULATION OF INVESTMENT PROCESSES IN BUILDING SPHERE

The market economy operates based on a free choice of priorities and investment directions. Ukraine's construction industry will face a sharp need for investment, if there is no economic incentive for investors and financial advantages of investing in construction will not manifest.

For the sustainable development of the construction industry, there is a need for continuous improvement of the applied approaches, considering both regional practice and foreign experience. Analysis of the experience of foreign countries in the field of state regulation and stimulation of investment in construction will help develop new, effective mechanisms for implementing state policy in the field of residential, industrial and infrastructure construction, establishing and expanding international cooperation in the construction sector, creating opportunities for attracting investment in housing and industrial construction, including foreign ones.

Let's consider foreign practice of state regulation of investment and construction processes relevant for borrowing or improvement in Ukraine in such developed countries as the USA, Great Britain, Germany, France and in the largest transition economies - China.

Government of Great Britain [1; 2] advocates attracting foreign direct investment into the country, accompanied by the introduction of advanced foreign technology and the growth of the number of jobs. The country has one of the most attractive investment regimes among the developed countries of the world.

Significant role in attracting foreign capital to the country are bilateral treaties of Great Britain with other countries to encourage trade and investment and similar agreements operating within the framework of the European Union.

The underlying legislative act regulating investment activity in the country is the Financial Services and Markets Act 2000, with the following changes.

In the UK, the mechanism of currency control contributes to the inflow of foreign investment. However, foreign firms created for importing and marketing on the London market products produced outside the "sterling zone" should be financed exclusively from their own funds. However, if the company being created is of serious interest to the UK economy, a foreign investor may receive British loans for the development of their business.

On the territory of the country a clear and fairly simple registration system of business, foreign investors can freely choose different objects of investment of their capital.

The British government has developed and applies to investors a system of financial incentives, unique for national and foreign companies.

Regulation of investment activity in Great Britain is carried out by special bodies, most of which are independent self-regulated organizations and authorized exchanges, the state only provides the appropriate regulatory framework. In particular, mutual investment trusts and openings, investment companies effectively combine small investments into large ones.

Factors that restrict the activities of foreign investors are the current system of taxation and currency restrictions. In recent years, in the UK, there is a tendency to more differentiated approach to assessing plans to expand investments by individual foreign firms and link them with certain obligations. Absorption of national firms by foreign capital is considered undesirable.

In the German economy [1; 3; 4; 5], foreign investment plays a much more important role than in other European countries. The country provides equal conditions of management to foreign and national investors. The German legislation does not impose any restrictions on the import and export of foreign capital, the participation of foreigners in the capital of established companies, or the employment of senior management positions in these companies by foreigners. The country has many enterprises with foreign participation, which actively use the scientific and technical achievements of parent companies located abroad.

Regulates investment activity in the country "Law on Credit Institutions", the Law on Investment Companies (KAGG). Investment companies are subject to control by the Federal Office for Supervision over Credit Institutions. The direction of foreign investment is regulated through the taxation system.

In the practice of regional investment, the term "social task" is used, which corresponds to the concept of "target program". In the new (eastern) federal states, the targeted rules "Improvement of the regional economic structure" were developed, which promoted investment through subsidies for infrastructure development from the federal and land budgets, as well as the European Regional Development Fund.

The attitude of France [1; 3; 6] to foreign investment is generally benevolent, although the position of the government from time to time is changing. Investing in foreign capital is not allowed or limited only in certain branches of the economy: mineral exploration, mining, pharmaceutical industry. Relations in the field of investment are regulated by the Code of the financial and monetary system. Investments in France and from France to foreign countries do not require special permission. At the same time, the procedures provide for the submission of a declaration to the Ministry of Economy and Finance.

A foreign company is subject to a national tax regime, loans and various kinds of benefits. There are no restrictions on the transfer of funds from foreign investors from the country.

With a general liberal attitude to foreign investment, France introduces a few restrictions on the rights of non-residents. First, it concerns foreign investment in certain industries - extraction, processing and import of oil. In addition, foreign investors cannot hold managerial positions in companies engaged in the specified activity. In France there is currency control, as well as special control, directly related to foreign exchange restrictions, in relation to foreign loans, domestic and foreign direct investment.

In 1977, France adopted a circular on direct French investment abroad and direct foreign investment in the country, which restricts the excessive impact of foreign capital.

The relationship between the state and the regions is based on a contractual basis within the national planning system. Each region concludes with the state scheduled contracts that bind both parties to a specific investment program. Then they are introduced into the national plan of the state as a priority. At the same time, trying to allocate additional funds to the most problematic regions. The implementation of such a policy is carried out in the form of restructuring of the regional economy. To do this, with the help of investment grants allocated by the state, assistance is provided to improve the regional infrastructure and create jobs in the priority sectors of the economy.

The main priorities of the American [1; 3; 4; 7] investment policy is attracting investment in the US, as well as stimulating foreign investment to create more jobs and economic recovery. In this regard, the main priority of the federal government, state and state level authorities, and the municipal level are the maximum support of potential investors and the creation of effective incentives for investing.

Relations in the investment field at the federal level are governed by the Public Law No. 110-49 "On Foreign Investment and National Security Act 2007" and related sectoral laws.

The regulation of investment activity is carried out on two levels: at the federal level and at the state level.

At the federal level, common rules are set, which must be respected by foreign investors in the US market. Local government authorities of each American state adopt laws regulating acts on the conditions of entrepreneurial activity of foreign investors in their territory. The federal government does not play an active role in defining the goals of economic development in a given region of the United States.

The US government provides equal conditions for the management of foreign and national investors. Foreign investors can freely invest in most sectors of the US economy, as well as withdraw capital and profits. The country has created the most effective system of investor protection, which consists of three lines of protection: the state, self-regulated brokers and brokers themselves. This is probably one of the reasons why the stock market in this country is very effective.

The state takes an active part in investment processes. Of gross investments in the US economy, the state's share is more than 20%, of which 12% goes to investment from the federal budget. The state's influence on investment activity is carried out with the help of financial instruments such as reduced rates of income tax, accelerated depreciation policy, preferential bank lending, innovative grants, etc.

The United States deliberately develops international cooperation in the investment sphere. For example, in the year 2013, the TFTA, or the Transatlantic Trade and Investment Partnership (TTIP), was being actively pursued as a free trade area between America and the European Union.

The Chinese Government [1; 8], starting to pursue economic reforms since 1978, pays great attention to attracting foreign capital to the country. Thanks to foreign investments, the issue of employment of the population is resolved, the transition to high-tech production is carried out, the economy is transformed into a market format and integrated into the world economy.

According to the current legislation, in China there are the following forms of investment: joint ventures, joint cooperative enterprises, enterprises with 100% foreign capital, operations in the stock market. In addition, the China has a mode of demarcation of foreign investment in the following categories: encouraged, resolved, limited, prohibited.

To provide a favorable investment climate, the Government of China established administrative and economic entities with preferential regimes, namely: special economic zones, zones of economic and technological development, free trade zones, border economic cooperation zones, and zones of scientific and technological development. In total, according to recent figures, more than 200 zones of preferential economic regime have been established on the territory of China. In some developed regions, technological parks are built, which accumulates investment flows to China. On concessional terms, it is also possible to create new enter-

prises based on old ones, which are considered unprofitable and subject to dismantling.

The liberalization of Chinese investment legislation is not only due to the application of a special regime for foreign investors, but also by improving the economic conditions for national enterprises.

China's economy is lent to the banking system. The main types of lending are commercial and political lending.

In commercial lending, interest rates on loans, as well as lending, are formed based on market principles.

Political lending is intended to serve as the main instrument for the implementation of state economic policy. To this end, three state-owned development banks were set up in China. At the same time, the main source of funds for political lending is the state budget. To finance the most important structural projects in the economy, created mainly by the branch principle, the budgetary funds and various forms of savings of citizens who are under the responsibility of the state are actively used [3; 9].

The analysis of housing financing systems in developed countries of the world (USA, England, Germany, France) shows that they are based on a variety of specialized financial institutions - construction and savings, mortgage companies, investment banks, credit unions, as well as on several financial technologies: construction savings, mortgage lending, a certain combination of other, public and private financing, as well as various mixed forms of public and private funding. In these countries the state possesses and active market instruments of state regulation of investment processes through mortgage markets, secondary loans using state (or semi-public) financial institutions.

So, in the United States, the process of providing mortgage loans to mortgage lenders by mortgage lenders takes place in the primary market, and in the secondary mortgage market, mortgage loans are sold to the investor (refinanced by them). The proceeds of the money mortgage companies are again put into circulation (issuing new loans), and their profit consists of fees for loans and payments, for their maintenance. This model implies the existence of a developed secondary mortgage market, which sells already issued mortgages. The model is attractive in that it solves the problem of long-term financial resources.

In Germany and France, the foundation of the primary market for a residential mortgage system is the construction and savings fund. The essence of financial assistance for construction savings is that the future developer of housing, with the consent of the building savings bank accumulates on the account for a deposit over several years, a certain amount of cash. Subject to the terms of the agreement, the depositor, in addition to the accumulated deposit and interest on it, receives the right to a bank loan in the amount approximately equal to the amount of accumulated deposit. The union of three

monetary sources – the owner's own contribution, the bank's loan and the state aid (bonus) allows the developer not only to start but also complete the construction project. The system of building savings is autonomous, that is, it does not require external borrowing. This distinctive feature is achieved by the fact that the time of using money, for example, A participant A, is equivalent to the time during which another person uses it himself.

Independence of the system from the financial market makes it possible to issue loans to participants at a lower market rate, while government subsidies enable target savings to compete successfully with market instruments. Through the system of building savings, the state realizes its own interests: forms a private housing fund, primary and secondary housing market, reduces the allocation to operation and repair of the state housing stock, solves the socially acute problem of providing housing for the population [10, c. 325, 326].

In Great Britain the system of construction societies successfully operates. The mechanism of their work is somewhat like the activities of German, but to obtain a home loan does not necessarily be a depositor of a construction company. In recent years, because of the liberalization of the banking legislation of Great Britain, the functions of these societies are becoming closer to the functions of commercial banks. Competition of the above structures leads to their convergence and reduction of loan rates [11, c. 91].

Summarizing the above, it should be noted that the activity of foreign investors in foreign countries is governed by national law, special laws or codes for foreign investment are absent, only some administrative regulations have been developed, as well as the relevant articles of separate laws. In the main, the legislation is aimed at liberalizing the investment regime and providing foreign investors with: no less favorable conditions than domestic ones; guarantees on the transfer of profits, and in the case of expropriation of their property – a full compensation; the possibility of resolving disputes between a foreign investor and the host investment state.

In general, the policy of foreign countries in the investment sphere pursues the following main goals:

- directing investments to restructure the economy to improve its efficiency;
- directing savings to the real economy sector investment;
- the formation of an efficient and controlled capital market;
- reduction and insurance of investment risks;
- improving the investment climate for domestic and foreign capital.

Legal guarantees to investors is an important criterion for a favorable investment climate.

The main methods of regulation of investment activity are:

1. *Direct*: tight regulatory regulations; reducing bureaucratic pressure on business, simplifying registra-

tion procedures; providing equal conditions of management to foreign and national investors; the choice of priorities is exercised by the state; effective system of investor protection; effective pooling of small investments into large ones; budget financing; direct administrative interference in the investment process by coordinating the plans of the largest corporations; creation of specialized financial institutions for the financing of housing construction.

2. *Indirect*: regulation of total investment through a policy of interest rate, monetary, tax and depreciation policy; Selective stimulation of investments in certain enterprises, branches and spheres of activity through credit and tax privileges; involvement in the construction of housing "long" funds of insurance companies and non-state pension funds; the use of various mixed forms of public and private funding.

In Ukraine, the relations that arise in carrying out investment activity in the construction industry are regulated, first of all, by the Laws of Ukraine "On investment activity", "On the regime of foreign investment", "On protection of foreign investments in Ukraine", "On institutions of collective investment", "On Leasing", "On Innovation Activity", "On Securities and the Stock Market". Also, the norms of economic, tax, currency, banking, customs, civil and land legislation, legal acts on the privatization of entrepreneurship, innovation activity, securities, stock market, etc., and international legal acts to which Ukraine is a party.

In accordance with Part 3 of Art. 12 of the Law of Ukraine "On Investment Activity" [12], regulation of terms of investment activity includes: submission of financial assistance in the form of grants, subsidies, subventions, budget loans for the development of individual regions, industries, industries; state norms and standards; measures to develop and protect economic competition; denationalization and privatization of property; definition of conditions of use of land, water and other natural resources; pricing policies; conducting state expert appraisal of investment projects; other activities.

The legal and organizational basis for attracting funds of individuals and legal entities to finance housing set the Laws of Ukraine "On investment activity" [12] "On financial and credit mechanisms and management of property under construction housing and real estate transactions" [13] "On collective investing" [14]. Investing in housing construction in Ukraine can be made only through the construction financing funds (the CFF) real estate funds (the background), collective investment, issue interest-free (target) bonds the developer.

The Construction Financing Fund is the money transferred to the Governor of the CFF in management that is used or will be used by the manager in the future under the terms of the Fund Rules and the participation agreements in the CFF [13].

The CFF is created by a financial institution to provide real estate construction at the expense of individu-

als and legal entities, to become the property of the CFF's trustees upon completion of the construction of the investment object. To secure the obligations assumed by him, the developer transfers to the CFF manager under the mortgage agreement the property rights to the real estate that is the subject of construction. Moreover, for each object (apartment), between the manager and developer concludes a contract of assignment of property rights and a contract of commission with the grace period. In case of violation by the developer of the obligations assumed, the manager has the right to change it or independently perform the functions of the developer.

Among the advantages of the CFF can be distinguished: clear legislative regulation; the necessity for the creation of the CFF of the complete package of permits for construction; protection of investors, envisaged at the legislative level; control of construction participants for the purposeful use of funds; minimized risk of double resale of apartments; funds attracted by the CFF are not subject to taxation; at liquidation of the CFF or bankruptcy of the manager, the funds of the trustees remain in the accounts and may be transferred to another manager; Legally there is the possibility of replacing a developer or manager in case of problems.

The main risks and disadvantages are: the developer can create a "pocket" fund manager; the risk of delaying the completion of construction or even its termination; increase in the value of the object through an additional payment (reward) to the manager; the model contract protects only the rights of the developer and the manager.

The Real Estate Fund (REF) is the funds received by the administrator of the REF in the management, as well as real estate and other property, property rights and income derived from the management of these funds, including property rights and claims acquired under contracts for participation in the construction financing fund [13].

The source of funding for REF is the sale of REF certificates, which can be purchased by individuals and legal entities, residents and non-residents, intending not only to buy real estate in their property, but also to earn on real estate transactions.

Formed assets received by a financial company in which the REF was created, from issued and placed securities – certificates, are directed exclusively to finance the construction of a property. Real estate transactions are considered separately from the total assets of a financial company. It is not allowed to secure own liabilities of a financial company due to borrowed assets. This mechanism allows owners of such certificates (investors) to have transparent, secured and guaranteed income. Restrictions imposed by the current legislation strictly determine the increase in the market value of the borrowed assets in time and determine the obligations of the financial company.

Advantages of REF certificates: the ability to accumulate funds from individuals and legal entities to finance the entire construction cycle; the money involved in the REF is not taxable; REF certificates are freely rotated in the stock market and their price may vary arbitrarily under the influence of real estate prices; The activities of the REF manager are governed by the REF Rules, which stipulate an obligation to provide the holders of certificates of REF income.

At the same time, REF certificates have several disadvantages: significant material costs for the creation of the REF itself (the need to complete the entire design and estimate documentation for construction and accumulate 1 million UAH of equity); a very complex and time-consuming procedure for obtaining a permit for the right to issue certificates of REF; the impossibility of combining different mechanisms for project management in construction, etc.

For investing and financing housing construction companies, developers can issue interest-free (target) bonds, on which the basic product is the unit of real estate – a metric unit of the area of the premises. When the developer presents to the investor to repay a certain number of bonds, corresponding to the project area of the investment object, the developer is obliged to transfer to the investor the given concrete object of investment. Based on an investment agreement (investment contract for construction), in the future, after the introduction of the housing construction object into operation, the registration of ownership of the object of investment.

The main positive features of this mechanism are optimization of taxation and minimization of costs, to negative – the lack of subordinate regulations on the mechanism of exchange of targeted bonds to an individually determined apartment.

Joint Investment Institutes (JI) – a corporate or unit fund that carries out activities related to the unification (attraction) of funds of investors to profit from investing them in securities of other issuers, corporate rights, real estate and other assets [121]. JI in Ukraine is not particularly popular due to the imperfect regulatory framework and the underdevelopment and low level of capitalization of the domestic stock market.

The following negative determinants that do not encourage foreign investors to enter the Ukrainian market are a significant lagging behind Ukraine from developed countries due to factors such as the perfection of the legislation for corporate business and the availability of high-level management, the development of information systems and disclosure of information, the availability of effective mechanisms for guaranteeing rights and the freedoms of investors, the level of their protection, the risks of acquiring stakes that are not controlling, the increase in the cost of exploring potential partners, and threats of loss of operational investment management.

The analysis of the state of legal regulation in the investment sphere of Ukraine, the development of the securities market and investment trends in the real estate market, and the practice of state regulation of investment and construction processes in Ukraine testify to the expediency of adapting the experience of developed countries to the methods of state regulation of investment activity in the construction sphere to Ukraine, which may become an essential direction of intensification of investment processes in the country.

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### **Шлафман Н. Л., Фроліна К. Л. Дослідження досвіду зарубіжних країн у регулюванні інвестиційних процесів у будівельній сфері**

У статті досліджено досвід зарубіжних країн у регулюванні інвестиційних процесів у будівельній сфері. Аналіз досвіду зарубіжних країн щодо державного регулювання і стимулювання інвестиційної діяльності в будівництві може допомогти розробити нові, ефективні механізми реалізації державної політики в галузі житлового, промислового та інфраструктурного будівництва, у налагодженні і розширенні міжнародного співробітництва в будівельній сфері, створенні можливостей залучення інвестицій у житлове і промислове будівництво, у тому числі іноземних.

Аналіз систем фінансування будівництва житла у розвинутих країнах світу (США, Англії, Німеччині, Франції) свідчить, що вони базуються на різноманітності спеціалізованих фінансових інститутів – будівельно-ощадних, іпотечних компаніях, інвестиційних банках, кредитних спілках, а також на кількох фінансових технологіях: будівельних заощадженнях, іпотечному кредитуванні, певного поєднання одного з іншим, державному та приватному фінансуванні, а також на різноманітних змішаних формах державного та приватного фінансування. У цих країнах держава володіє і дієвими ринковими інструментами державного регулювання інвестиційних процесів через ринки закладних, вторинних кредитів із використанням державних (чи напівдержавних) фінансових інститутів.

Проведений аналіз стану правового регулювання в інвестиційній сфері України, розвитку ринку цінних паперів та інвестиційних тенденцій ринку нерухомості, практики державного регулювання інвестиційно-будівельних процесів в Україні

свідчить про доцільність адаптації досвіду розвинутих країн щодо методів державного регулювання інвестиційної діяльності в будівельній сфері в Україні, що може стати суттєвим напрямом активізації інвестиційних процесів в країні.

*Ключові слова:* інвестиційна сфера, будівництво, державне регулювання, фінансові інститути.

### **Шлафман Н. Л., Фроліна К. Л. Исследование опыта зарубежных стран в регулировании инвестиционных процессов в строительной сфере**

В статье исследован опыт зарубежных стран в регулировании инвестиционных процессов в строительной сфере. Анализ опыта зарубежных стран по государственному регулированию и стимулированию инвестиционной деятельности в строительстве может помочь разработать новые, эффективные механизмы реализации государственной политики в области жилищного, промышленного и инфраструктурного строительства, налаживании и расширении международного сотрудничества в строительной сфере, создании возможностей привлечения инвестиций в жилищное и промышленное строительство, в том числе иностранных.

Анализ систем финансирования строительства жилья в развитых странах мира (США, Англии, Германии, Франции) свидетельствует, что они базируются на разнообразии специализированных финансовых институтов – строительно-сберегательных, ипотечных компаниях, инвестиционных банках, кредитных союзах, а также на нескольких финансовых технологиях: строительных сбережениях, ипотечном кредитовании, определенного сочетания одного с другим, государственном и частном финансировании, а также на различных смешанных формах государственного и частного финансирования. В этих странах государство владеет и действующими рыночными инструментами государственного регулирования инвестиционных процессов через рынки закладных, вторичных кредитов с использованием государственных (или полугосударственных) финансовых институтов.

Проведенный анализ состояния правового регулирования в инвестиционной сфере Украины, развития рынка ценных бумаг и инвестиционных тенденций рынка недвижимости, практики государственного регулирования инвестиционно-строительных процессов в Украине свидетельствует о целесообразности адаптации опыта развитых стран касательно методов государственного регулирования инвестиционной деятельности в строительной сфере, в Украине, что может стать существенным направлением активизации инвестиционных процессов в стране.

*Ключевые слова:* инвестиционная сфера, строительство, государственное регулирование, финансовые институты.

**Shlafman N., Frolina K. Research of the foreign countries experience in regulation of investment processes in building sphere**

The article describes the study of the experience of foreign countries in the regulation of investment processes in the construction industry. Analysis of the experience of foreign countries in the field of state regulation and stimulation of investment in construction can help develop new, effective mechanisms for implementing state policy in the field of residential, industrial and infrastructure construction, establishing and expanding international cooperation in the construction sector, creating opportunities for attracting investment in housing and industrial construction, including foreign ones.

The analysis of housing financing systems in developed countries of the world (USA, England, Germany, France) shows that they are based on a variety of specialized financial institutions - construction and sa-

vings, mortgage companies, investment banks, credit unions, as well as on several financial technologies: construction savings, mortgage lending, a certain combination of other, public and private financing, as well as various mixed forms of public and private funding. In these countries the state possesses and active market instruments of state regulation of investment processes through mortgage markets, secondary loans using state (or semi-public) financial institutions.

The analysis of the state of legal regulation in the investment sphere of Ukraine, the development of the securities market and investment trends in the real estate market, and the practice of state regulation of investment and construction processes in Ukraine testify to the expediency of adapting the experience of developed countries to the methods of state regulation of investment activity in the construction sphere to Ukraine, which may become an essential direction of intensification of investment processes in the country.

*Keywords:* investment sphere, construction, state regulation, financial institutes.

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