Administrative and legal issues of attracting investment for the development of port infrastructure

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Abstract. Mechanisms of the investment policy are a set of methods and technologies for attracting investment. Methods of the regional policy can be administrative and economic depending on market factors. An analysis of world and domestic practice shows that the involvement of the private sector, privatization or public-private partnership have a positive effect on the economic efficiency of ports. Regardless of the form, when attracting private capital in the transport infrastructure, the government pursues two goals - increasing the efficiency of final services and optimizing budget expenditures. The administrative and legal issues of attracting investment are relevant. Problems related to the mechanism of administrative and legal regulation of attracting investment for the development of port infrastructure are urgent in the current legislation. The solution of these problems will be useful for law enforcement activities. The article explores ways to increase the amount of investment in the port infrastructure of the Russian Federation.

1 Introduction

Administrative methods (adoption of legal acts) are used to regulate measures aimed to attract investment: legal acts regulate loans, subsidies, licenses and quotas.

Economic methods (direct and indirect) are used to attract investment into the region and control their use. Indirect measures of the investment policy include forecast programs, planning of the economic development of the territory, use of tax and credit measures (subsidies, reduction of tax rates).

In July 2015, the law on public-private partnership (13.07.2015 N 224-FZ) was enacted to fill gaps in the regulations in order to create the private infrastructure. In addition, in 2015 the Russian government issued rules for special investment contracts that can be used by foreign and domestic companies to produce goods that are not currently produced in Russia or in the Eurasian Economic Union [1].

Complex investment projects in the transport system are an important factor for most regions, especially in the current economic situation.

These projects are the basis for the national economy, meeting the national interests and laying the foundation for the national economic development. One of the main factors supporting the economic growth of any country is the transport infrastructure.

There are administrative and legal conflicts in attracting investments. The article will analyze legal possibilities for attracting investment, including foreign one, into the port infrastructure.

2 Materials and Methods

Foreign investment is of crucial importance. To address the problems in this area, investing in the transport infrastructure is an effective way to stimulate the economy. In the short term, investing in the transport infrastructure solves important social issues and creates new jobs. In the medium term, it contributes to the economic growth; and in the long term, investment helps create an effect in which costs are reduced and the economy shows high growth rates improving the quality of life of the population [2].

It is investment in the transport infrastructure in difficult financial and economic conditions that help change the direction of economic development; therefore, government support plays a crucial role.

Up to 90% of the global trade turnover is carried out using maritime transport. For many countries, the availability of high-quality and efficient maritime infrastructure is one of the key factors of economic growth. Against the backdrop of growth in the volume of international maritime trade in 1992–2015, almost one trillion dollars were invested in the global port infrastructure.

Even in case of a significant annual increase in the volume of investment, it is not enough to meet demand and ensure the proper pace of renewal of port facilities. As an example of the negative effect of the port infrastructure deficit, one can cite the assessment of the US Department of Transportation: according to the calculation, the country loses up to $40 billion annually

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due to a shortage of deep-water ports and queues for unloading [3].

The existing deficit caused the liberalization of the port market, which was traditionally under government control; private capital has been used. The similar picture is observed in Russia.

The activity of Russian sea ports has been stable. Over ten years, the total cargo turnover has increased by 75%, the transshipment capacity is more than one billion tons.

Last year, the volume of cargo exceeded 800 million tons. This year the positive trend is continuing. Despite the fact that there is still a certain reserve of transshipment capacities, the development plans will provide for their increase by 350 million tons by 2024.

The drivers of growth in the cargo base are hydrocarbons: liquefied natural gas, oil and coal. As for coal, its transshipment is carried in in the ports of the Far East, where it is planned to build new terminals.

The port capacities of the Northern Sea Route will be oriented towards the export of coal from Dikson, Sabetta and Dudinka, also specializing in the delivery of oil from new fields, are related to the Arctic traffic. To protect the national cargo base, it is necessary to develop ports of the North-West, including Murmansk transport hub. As for the Black Sea ports, the main role in the nearest development plans is assigned to Taman.

Thus, the port infrastructure should be developed both quantitatively and qualitatively. Large funds are required to maintain existing capacities and increase them. Under the current budget constraints, it is difficult to rely on government support.

Attracting private funds for the development of port infrastructure has limitations associated with restrictions under the law on seaports of private ownership of objects in this area. The use of the mechanism of public-private partnership is possible. As a result, a mutually beneficial alliance of interests is formed: the government funds port's life support systems (security, navigation, communications), companies – port infrastructure.

In world practice, you can find all sorts of forms of involving private capital in the activities of sea ports. It is most expedient to approach their typology from the point of view of the main elements of the relationship between the government and the private sector: regulation, ownership and operation. Regulatory activities include enforcement, licensing, pricing, competition control, etc. Owners own the port infrastructure and carry out investment activities. The operational function implies the direct provision of the movement of goods / passengers through the port and the performance of indirect activities.

The most common form of involving the private sector in the port infrastructure is the “managerial” model (landlord model).

Some sources indicate that up to 90% of all port projects can be attributed to this model. Given the strategic importance of many ports, public-private partnerships are the most balanced tool for involving the private sector in the management of the port infrastructure. On the one hand, PPP allows you to attract private capital and implement a commercial incentive through the distribution of responsibility and risks; on the other hand, it eliminates the possibility of negative consequences of full-fledged privatization (for example, the use of a land plot not for its original purpose) [4].

Public-private partnership schemes can be divided by two criteria: by the readiness of the infrastructure and by the ownership after the completion of the agreement. Readiness is a division into existing facilities (“brownfield”), which need to be reconstructed and / or expanded, and planned facilities (“greenfield”).

The analysis of domestic practice identified a number of trends in the development of the seaport infrastructure. These trends can be divided into two groups - external (determined by the development of the global and national economy) and internal (particular to the port industry).

External factors include the stagnating dynamics of economic growth in Russia, an increase in the world and national cargo turnover and the resulting increase in the need for port infrastructure capacities, increased competition between individual port infrastructure facilities (ports and terminals) and countries and sea basins for servicing cargo flows [5].

Among the internal factors are the trend of changing geography, the type of port infrastructure facilities and shipped cargo, priorities of the government policy in the development of sea port infrastructure, the dynamics of the throughput of port infrastructure, and the changing place of Russia in the international cargo turnover served by ports. Currently, there are two options for the development of sea port infrastructure:

1. Target investment in the development of ports associated with the cargo base of the investor;
2. Investment in specialized and/or multi-product stevedoring facilities not associated with a specific cargo owner [6].

In the first case, large mining companies that generate a steady flow of cargo create end-to-end barrier-free logistics chains at the junction of “port-railway”. One of the main problems is the lack of railway approaches and port logistics infrastructure. Without large-scale construction/reconstruction of land-based logistics infrastructure (port clusters, port industrial parks), it is difficult for Russian ports to transform into efficient nodes in the global supply chains. In the second case, the development of ports makes it possible to provide port services to a wide range of customers.

However, in this segment, there is also a deficit in the development of adjacent transport, logistics and energy infrastructures.

3 Results and Discussion
The implementation of the model of attracting targeted investment in the development of ports is caused by the lack of modern port facilities and the need of private industry companies of shippers (primarily those engaged in the extraction of raw materials (oil, timber, coal, etc.) and their primary processing) in improving the efficiency of exporting their products. They are interested in the sustainable development of seaports. These companies buy shares in stevedoring companies of seaports and become their owners. For large exporters, this makes it possible to reduce export costs and risks of non-export of products.

Companies (large industrial and financial groups) are interested in the development of seaports - they are ready to continue investing in the development of seaport infrastructure facilities. The opinion of INFRAONE analysts on the priorities of the interests of the private investor and infrastructure projects in water transport was studied.

Objects such as seaports, hydraulic structures, terminals and navigation are compared. A private investor is attracted by high excess incomes and high demand. In the 2000s, the government funded port's life support systems, including access railways. Today, the private investor should also participate in financing the related infrastructure. If the infrastructure (berths, terminals, etc.) is developed in the Far Eastern port for the supply of coal, the limited transportation capacity of the railway from Kuzbass or Khakassia can become a bottleneck. There should be a comprehensive approach at the stage of project substantiation.

Not a single component can be excluded from the link "port – cargo – cargo delivery methods". Moreover, when developing the project, all stages should be synchronized which means their timely implementation and completion, ensuring a return on investment. In general, the issue of synchronizing the work within the public-private partnership requires legal revision, since all the risks of violations fall on the concessionaire. The national transport infrastructure, including the port one, attracts attention of foreign investors. But their participation is possible only with the approval of the Government Commission on Foreign Investments. The bureaucracy with the verification of a foreign investor is justified, given that we are talking about a seaport as a strategic object [7].

In Russian practice, there is an example of attracting investment into the Primorye-1 and Primorye-2 projects. Chinese investors had no real competitors.

This unreasonably low level of competition is unlikely to be approved by the Federal Antimonopoly Service. As for the example of attracting the same Chinese investors to the port infrastructure, a presentation of the project for the construction of the deep-water area of Arkhangelsk seaport was presented at the forum. It should be noted that it will be implemented on the PPP basis. A Chinese company is a strategic partner.

How to combine the accelerated procedure for attracting a foreign investor and passing it through the Government Commission is a topical issue in the context of budget constraints. As for the Russian practice, it is debatable whether the seaport is a concession object.

Technologically interconnected zones are sea, railway, and logistics. This allows you to divide the project into lots. But as areas of responsibility, these lots will be loosely connected. At the same time, for the bank, its attractiveness is low. The issue of investment port dues is also debatable. Its analogue is port dues, but they are not charged for services and used for the infrastructure development. It can be considered as a return on investment tool. Experts claim that this collection is suitable for the return of funds in small projects. The advantage of this mechanism is its guarantee. In addition, the Ministry of Finance of the Russian Federation has not yet approved the methodology for calculating this due. In general, the problems of public-private partnership are funding problems. But no less relevant are the issues of legal regulation:

1. The modern investment policy is a purposeful activity of the state to mobilize investment funds to ensure the constantly expanded reproduction of material and spiritual benefits in society. The investment policy is an important lever for the implementation of the necessary structural transformations in the economy, for the modernization of the production of material and spiritual goods. Development of undeveloped areas of the territory of the state, elimination of disproportions in regional development, and integration of regions into a single national-state investment market. Through the implementation of the legal investment policy, it is possible to solve social problems: ensuring employment of the population, improving the living standards of the entire population of the country, ensuring the continuous development of the material and technical base of healthcare, science, education, and culture, as the basis for the life support of the whole society.

2. Modern administrative and legal regulation of investment activity in the Russian Federation is characterized by inconsistency and instability. The legal regulation of the sphere of public relations does not consider domestic historical and foreign experience, which inevitably leads to negative phenomena and trends, errors in law-making subjects. Such a situation does not allow active involvement in attracting domestic and foreign investors, since the latter are justifiably afraid for the safety of their investments. Thus, the imperfect administrative and legal regulation of investment processes objectively impedes the effective functioning and development of the Russian economy.

3. To systematize the already existing regulatory framework for investment activity. At present, it is inappropriate to have several separate laws regulating relations in the field of investment activity. It is long overdue for an urgent need.
to create on the basis of these laws a single legislative act that would generally regulate investment relations in Russia. The norms regulating certain types of these legal relations, which are formed in the course of foreign investments, investments in the form of capital investments, in the securities market, while protecting the rights of investors, may constitute separate chapters of such a law.

4. A special investment contract is by far the most common form of interaction between the state and private business. That is why, initially, emphasis should be placed on its transformation and elimination of identified problems. The Tax Code of the Russian Federation recognizes as payers only investors who are a party to a special investment contract concluded at the federal level (Article 25.16 of the Tax Code of the Russian Federation). In the process of practical implementation of a special investment contract, the business community identified the need to adjust these provisions of the Tax Code of the Russian Federation. The practice of implementing the contract confirms that intra-corporate schemes for the implementation of investment projects have a rather complex structure, and in most cases, the direct production of the industry is carried out by involved persons. In this connection, it seems necessary to adjust the provisions of the Tax Code to clarify the circle of persons entitled to apply for tax benefits, to grant this right to persons who directly carry out production, that is, involved persons.

In addition, it should be noted that the majority of the business community is also in favor of ensuring the possibility of applying for tax benefits, regardless of what share of income from the implementation of the project in the structure of all income of a participant in a special investment contract, providing for separate accounting for income and expenses received or incurred in the process implementation of the investment project and other income and expenses of the participant of the special investment contract.

5. The investor should be provided with guarantees for the implementation of activities to create a favorable investment environment. The legislator, unfortunately, proceeds from the logic that the only preference is tax benefits. However, the investor needs help from the state in the position of simplifying the very procedure for concluding a contract. Unfortunately, an unnecessarily large number of stages of coordination and vigilant deadlines have been established. This indicates a delay in the start of activities. In addition, one of the most important gaps, in our opinion, is that if an investor approaches the state with the intention and idea of concluding a contract, the state authorities in any case select a person carrying out investment activities on a competitive basis. This leads to an absurd situation when the intention of one investor, his idea of implementation can be transferred to a third party.

A significant drawback is the lack of legally fixed administrative responsibility for violations in the process of concluding and implementing investment contracts, which characterizes the imperfection of the regulatory framework governing this area of activity, and indicates the relevance of further normative work in this direction.

4 Conclusion

Despite the attractiveness of public-private partnership projects in ports, they have not yet fully implemented in Russia. For many years, the ports have been funded by the Government. Currently, private funds are ready to participate in their development.

The problems can be solved through the mechanism of public-private partnership and privatization of facilities that are under the economic jurisdiction of public unitary enterprises.

The main problems whose solution can increase the amount of infrastructure investment in Russia are as follows.

Firstly, it is necessary to ensure the transparency and competitiveness of tender procedures, which will help increase the efficiency of investment into the Russian infrastructure.

Secondly, it is necessary to assist the government in achieving the required level of return on investment. Due to insufficient guarantees of return on investment, the private sector is afraid of investing its financial resources.

Thirdly, regional projects should be funded from the federal budget. This funding must be preceded by the fulfillment of preconditions that will reduce the risk and increase the chances of project success. It is necessary to develop regional strategies for developing the regional infrastructure.

Thus, the investment attractiveness of the regions should be taken into account as an important factor influencing the activity of investors. Many other factors that influence the attraction of investments in the transport industry are taken into account [8].

Investment in the transport industry is based on the federal targeted programs and activities of private investors.

In general, the Russian Federation has all modes of transport, and the location and structure of transport communications correspond to the internal and external transport and economic relations.

Investment in the transport industry of the Russian Federation is growing. This is evidenced by government programs and interest from the private sector.
Thus, investing in the transport industry is an important task for the government and a very promising area for businesses.

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