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Public-Private Partnership as Means of State & Business Cooperation

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Abstract

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The state has to guarantee to the population, especially with low income level, a certain minimum set of social services. As a result, social infrastructure has no opportunity to be self-sufficient. The ways to resolve this problem are social partnership agreements, public-private partnership and inter-municipal cooperation. The article deals with the forms of mutually beneficial cooperation applied by the authorities of the constituent subjects of the Russian Federation; the Khanty-Mansi Autonomous District-Yugra is taken as an example. There are three main areas of cooperation: social partnership agreements, public-private partnership and inter-municipal cooperation. Public-private partnership is considered to be a form of mutually beneficial cooperation; its problems are revealed and its future is defined. Inter-municipal cooperation plays a significant role in development of social infrastructure of resource-extraction territories. It allows local self-governments to organize and carry out socially important projects, to develop their social infrastructure, to solve social problems of territories. One more way to attract investments into regional sector of economy is concession agreements.

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1. Introduction

At the present stage of the Russian economy development a considerable part of socially oriented investment projects cannot be implemented only at the budget expense of all three levels of the Russian



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budgetary system. The reason for this is the fact that the majority of municipalities are subsidiary dependent so maintenance and development of social infrastructure costs are limited. On the other hand, the state is obliged to guarantee certain social services to the needy population, and, therefore, there is no possibility for the social infrastructure to be completely self-sufficient.

The tools which can resolve the current problem are social and public-private partnership agreements, concluded between local authorities and city-forming enterprises; the agreements on municipal cooperation concluded between local governments of municipalities.

2. Agreements with resource-extraction enterprises

The purpose of a social partnership agreement is to develop cooperation on the basis of mutually advantageous interest and responsibility. The parties agree on social partnership and carrying out joint actions aimed at providing quality and living conditions of the population or staff work. Most agreements on social partnership concluded by municipalities have city-forming enterprises being the other party as they are the main employers of the area.

The aims of social partnerships agreements, first of all, are:

- economic development of territories (municipalities) taking into account key parameters of the Strategy of Social and Economic Development;
- unemployment decrease, reducing disproportions in labor market, population employment, manpower development;
- creating steady tax base and providing protection of local producers;
- increasing the population income and reducing the share of the population with the income below the living wage, increasing the real wage in the companies with all forms of ownership;
- ensuring compliance with the rights of citizens for social protection, availability of the guaranteed social services to the population of the area, preservation of social guarantees to the working citizens;
- compliance with the labor and environmental law (The Law of Khanty-Mansi Autonomous District-Yugra No. 53-oz, 2003).

The regulatory legal basis concerning regulation of social partnership agreements concluded between the Government of the Khanty-Mansi Autonomous District -Yugra and economic entities is generally supported by the Law of Khanty-Mansi Autonomous District-Yugra dated 10/18/2003 No. 53-oz "About the tripartite commissions on regulation of social and labor relations in the Khanty-Mansi Autonomous District -Yugra" (The Law of Khanty-Mansi Autonomous District-Yugra No. 53-oz, 2003).

Social partnership agreements in force in Khanty-Mansi Autonomous District-Yugra were generally concluded with the leading resource-extraction enterprises working in the district. They are JSC Oil Company Lukoil, JSC Rosneft, JSC Surgutneftegas, CJSC Sibur Holding, and also JSC Rostelecom, LLC Surgutgazstroy, LLC Construction and Finance Company, JSC Mobile TeleSystems, LLC Design, LLC Ugra Industrial Corporation, JSC Russian Railways (The official site of the Government of Khanty-Mansi Autonomous District-Yugra, 2016).

Social partnership is defined by interests of three parties. These are state interests, interests of business and interests of hired workers solving social problems. These are direct, main functions which

are aimed at providing social stability in society. There are also indirect (accompanying) functions, namely: impact of social partnership on society and development of economic democracy, ensuring social stability, social and economic safety and social justice. Social partnership contracts in resource-extraction settlements are usually signed between local governments and the management of city-forming resource-extraction enterprises. The main points in contracts are organizing cultural events, patronage and charity; joint financing of construction of social infrastructure buildings and employment of university and college graduates (Danilova, 2011).

3. Inter-municipal cooperation

In developing social infrastructure of resource-extraction territories the great value is given to inter-municipal cooperation. Inter-municipal cooperation allows local governments to organize and carry out socially important projects, to develop their own social infrastructure, to solve social problems of territories (Danilova, 2011).

Currently in Khanty-Mansi Autonomous District-Yugra there are several agreements in force, namely, agreements on inter-municipal cooperation with Surgut authorities, the Government of Yamalo-Nenets Autonomous District, the Government of Tyumen region, Tomsk region and St. Petersburg (The official site of the Government of Khanty-Mansi Autonomous District-Yugra, 2016).

4. Forms of public-private partnership

Public-private partnership represents legal interaction between the state and the private sector concerning objects of the state and municipal ownership, and services rendered by the government and municipal bodies and enterprises. The aim of this interaction is to implement socially significant projects in a wide range of economic activities (Vanavsky, 2009).

Khanty-Mansi Autonomous District-Yugra is among the constituent regions of the Russian Federation which have developed and adopted the legislation regulating public-private partnership. In particular, the Law of Khanty-Mansi Autonomous District-Yugra dated October 18, 2010 No. 155-oz "About participation of Khanty-Mansi Autonomous Area in public-private partnerships"; The Resolution of the government of Khanty-Mansi Autonomous District-Yugra dated June 23, 2011 No. 236-p "About the competition to have the right to conclude public-private partnership agreements", etc.

According to item 1 of Art. 4 of the Law of Khanty-Mansi Autonomous District-Yugra dated 10/18/2010 No. 155-oz "About participation of Khanty-Mansi Autonomous District-Yugra in public-private partnerships" public-private partnership is mutually beneficial cooperation of Khanty-Mansi Autonomous District-Yugra and municipalities of the autonomous district with a legal entity or several legal entities, or an individual entrepreneur to perform maintenance work, provide public services, reconstruct or construct public (social) infrastructure facilities on the terms of risk division, competence and responsibility by concluding public-private partnership agreements (The law of the Khanty-Mansi Autonomous District-Yugra No. 155-oz, 2010).

The subject of public-private partnership agreements can be those social (public) objects which are legislatively assigned to public authorities of Khanty-Mansi Autonomous District - Yugra and (or) local authorities of the autonomous district. These are in particular transport and transport

infrastructure, community facilities, energy supply, mobile and fixed communication and telecommunication, health care, education, culture and social service, tourism, sport and leisure, safety, law and order, hydraulic engineering constructions (The law of the Khanty-Mansi Autonomous District-Yugra No. 155-oz , 2010).

Public-private partnership agreements include the following forms of property participation of Khanty-Mansi Autonomous District-Yugra:

- payment of preparation and holding a competition on the agreement conclusion;
- ensuring state guarantees on the loans given by a private partner to execute the agreement;
- assisting a private partner to pay some interest costs on the loans to perform the agreement;
- assisting a private partner to pay costs to discharge obligations of the autonomous district which arise owing to decisions on economic regulation a private partner activities; a partner's social support of consumers defined in the agreement;
- repayment of a private partner's property or joint financing a private partner's activities in case it is provided by long-term target programs of the autonomous district;
- repayment of a private partner's property or joint financing of a private partner's activities connected with a private partner's discharge of obligations to deliver goods or services or to perform work according to the agreement;
- repayment of a private partner's property connected with providing the minimum income from a private partner's activities on operation of facilities established by the agreement;
- payment on adjustable tariffs (prices) of a certain volume of goods, work, or services provided by the agreement and fulfilled by a private partner;
- compensating a private partner the minimum volume of consumption according to terms of agreement in case these conditions cannot be satisfied in other ways;
- providing allocations to a private partner in case there emerges the right of state ownership for equivalent part of the authorized (depository) capitals of specified persons; it is carried out with the participation of the autonomous district according to the civil legislation (The law of the Khanty-Mansi Autonomous District-Yugra No. 155-oz, 2010).

5. Other conditions

In public-private partnership agreements there can be applied one or several of the listed above forms of property participation of Khanty-Mansi Autonomous District-Yugra in public-private partnerships. Besides the forms of property participation of the district authorities (bodies of municipal self-government), public-private partnership agreements obligatorily define: the object of the agreement; the validity of the agreement; the procedure of creation, reconstruction, operation of the facilities stipulated by the agreement; payment operations between the parties, including payments of the autonomous district connected with the agreement termination in the cases provided by the agreement according to the current legislation; finding the ownership of the facilities stipulated by the agreement (distribution of shares of the Khanty-Mansi Autonomous District-Yugra and a private partner in the property right to the specified facility of the agreement, the conditions why such rights have emerged and other conditions).

6. The participants' guarantees

The special attention in the Law of the Khanty-Mansi Autonomous District-Yugra dated 10/18/2010 year No. 155-oz "About participation of the Khanty-Mansi Autonomous District-Yugra in public-private partnerships" is paid to rights guarantees to the participants of the public-private partnership agreement.

In case a private partner bears losses caused by illegal actions (inaction) of government bodies of the Khanty-Mansi Autonomous District-Yugra or officials of these bodies, the former is guaranteed a compensation of the suffered losses according to the civil legislation.

If during the operation of the agreement in the autonomous district there was adopted a regulatory legal act worsening the private partner's conditions including assigning to the private partner additional obligations (in comparison with the regulations of the autonomous district at the time of the agreement conclusion), it can be the basis for the change of the agreement terms about public-private partnership, including prolongation of its period of validity and (or) the payments provided by the public-private partnership agreement to ensure the private partner's property interests at the time of signing the agreement.

7. Changes in public-private partnership agreements

Terms of public-private partnership agreements can change in order to protect a private partner's property interests which they have on the date of signing the agreement in case the following circumstances occur:

- material breach or inadequate discharge by the autonomous district of any obligation under the agreement at which a private partner bears losses;
- decisions made or actions taken by any public authority of the autonomous district interfering the discharge of the obligations by a private partner under the agreement including unreasonable intervention in economic activity of a private partner;
- discrepancy in the data specified in the tender documentation and other mistakes or inaccuracies interfering discharge of obligations by a private partner under the agreement;
- encumbrances on the land plot or other real or personal estate provided to a private partner which were not and could not be known to a private partner when signing the agreement.

Public-private partnership agreements can provide additional responsibilities (alongside with current responsibilities established by legislation) for inadequate discharge of obligations assumed by the parties.

8. Public-private partnership agreements enforcement

Despite the fact that the Khanty-Mansi Autonomous District-Yugra has considerable legislative sources the enforcement of public-private partnership agreements in the district is rather limited. The data on the official investment site of Khanty-Mansi Autonomous District-Yugra prove this idea. In 2010-2013 only 5 preschool education facilities were commissioned and bought out under public-private partnership agreements. In 2014 - 2020 there is a plan to construct 66 preschool and educational

facilities under public-private partnership agreement; and 5 projects to build and reconstruct engineering infrastructure facilities (Investment site of Khanty-Mansi Autonomous District-Yugra, 2016).

9. Conclusion

As one can see, investors are not very active implementing public-private partnership agreements. The authorities should consider new mechanisms of their stimulation. Concession agreements must attract new investments into the local sector of social economics, including housing and communal services. Elements of transport, engineering and social infrastructures can fall under concession agreements. A conessor (a constituent subject of the Russian Federation) concludes an agreement with a concessionaire (an individual entrepreneur, a Russian or foreign legal entity, or a society participation) under which a concessionaire assumes an obligation to build and (or) reconstruct property at one's own expense determined, but the property belongs or will belong to the conessor. The concessionaire is obliged to operate the facilities under the concession agreement, and the conessor is obliged to provide the right to own and use the facilities of the concession agreement for the term stipulated in the agreement. During facility operation the concessionaire is supposed to pay the conessor (The federal law No. 115, 2005).

The future of mutually beneficial cooperation between constituent subjects of the Russian Federation and private investors is quite promising and will be promoted by Law No. 115-FZ "About concession agreements".

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