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CERTAIN ASPECTS OF THE LEGAL REGULATION OF JOINT INVESTMENT INSTITUTIONS OPERATION IN THE EU

Кристина Резворович. ДЕЯКІ АСПЕКТИ ПРАВОВОГО РЕГУЛЮВАННЯ УПРАВЛІННЯ КОМПАНІЯМИ СПІЛЬНОГО ІНВЕСТИВАННЯ У ЄС. Одним із пріоритетних завдань, які стоять перед Україною на сучасному етапі, є збільшення темпів економічного зростання, що потребує залучення якомога більшої кількості інвестицій у різні галузі національної економіки. Однією з найбільш значимих форм інвестиційної діяльності в теперішній час в масштабах світового фінансового ринку є спільне інвестування, яке відбувається з використанням механізмів інвестиційних фондів. Важливість розвитку цієї сфери інвестиційної діяльності для економіки обумовлює необхідність проведення комплексного та детального дослідження світового досвіду правового регулювання інститутів спільного інвестування.

Спеціалізовані організації, що управляють активами багатьох інвесторів, існують у більшості країн у різних формах. Переважно вони представлені інвестиційними компаніями та інвестиційними фондами. Головною метою створення інститутів спільного інвестування є ефективне використання заощаджень населення шляхом залучення їх до інвестиційної діяльності. Це сприяє утворенню значних коштів для капіталовкладень в економіку. Таким чином, інвестиційні компанії пропонують механізм, за допомогою якого дрібні інвестори об'єднуються, щоб мати переваги від великомасштабного інвестування. Інвестиційні компанії здійснюють значний вплив на економіку, що виявляється у їх впливі на ринок цінних паперів. Інвестиційні компанії, вкладаючи кошти в акції, сприяють зростанню їх ціни, а отже, у такий спосіб забезпечується ліквідність цінних паперів і фондового ринку.

У науковій статті проаналізовано особливості правового регулювання інститутів спільного інвестування Євросоюзу. Надано визначення поняття та видів інститутів спільного інвестування, здійснено аналіз та визначення особливостей правового режиму інвестиційних фондів та інвестиційних компаній на ринку цінних паперів Євросоюзу, а також питання організації управління та контролю за діяльністю інститутів спільного інвестування в цих країнах.

Ключові слова: *інститут спільного інвестування, інвестиційні фонди, трасти, компанія з управління активами.*

Relevance of the study. One of the priorities faced by Ukraine at the present stage is the increase in economic growth, which requires attracting as much investment in various sectors of the national economy as possible. One of the most significant forms of investment activity at the present time on the scale of the global financial market is a joint investment, which takes place using the mechanisms of investment funds. In particular, in the United States, the population actively participates in joint investment, its share reaches 70% of the country's financial assets and is five times higher than the share of the state [4, 341-349]. The importance of developing this sphere of investment activity for the economy determines the need to conduct a comprehensive and detailed study of the world experience within legal regulation of joint investment institutions.

Recent publications review. A lot of domestic and foreign scientists studied the problems of joint investment institutions operation. Such scientists as T.Bilovus, O.Vynnyk, O.Harahonych, M.Dykha, O.Zinchenko, M.Kotova, O.Kryvenda, S.Krynytsya, N.Kuznetsova, V.Mamutov, L.Mashkovska, A.Mertens, O.Mykhailyk, S.Naumenkova, P. Perkonos, V.Polyukhovich, V.Reznikova, O.Slobodian, O.Sushch, L.Furdychko, N.Shapran, Yu. Shemshuchenko, H. Shovkopyas, O. Shcherbyna, etc. addressed these issues in their investigations.

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The article's objective is to analyze and determine the peculiarities of the legal regime of investment funds and investment companies in the securities market of the European Union, as well as to explore the organization of management and control over the activities of joint investment institutions in these countries.

Discussion Specialized organizations that manage the assets of many investors exist in various forms in most countries. They are mainly represented by investment companies and investment funds.

The main goal of creating joint investment institutions is the effective use of the population's savings by involving them to investment activities. This contributes to the formation of significant funds for investment in the economy. Thus, investment companies offer a mechanism by which small investors unite to benefit from the large-scale investment. Investment companies have a significant impact on the economy, which is manifested in their impact on the securities market. Investment companies, investing in shares, contribute to the growth of their prices, and therefore, in this way, the liquidity of securities and stock market is ensured.

It should be noted that individual investors receive significant advantages by investing money in securities of investment funds:

- due to the placement of investments among the maximum number of industries and companies, investment funds achieve diversification of investment risk;
- professional managers work on a permanent basis in investment funds, so individual depositors are deprived of the need to monitor the movement of courses every day and make current decisions;
- in most countries, the activities of investment funds are subject to strict supervision by regulatory bodies;
- investment funds create special risk management systems that ensure a high level of protection of the investor's rights and interests;
- investment funds offer some additional services to clients, including automatic reinvestment of dividends, convenient withdrawal schemes, the possibility of exchanging shares of one fund for shares of another, etc.

On the basis of the research of the history of development and formation of investment funds in the USA, EU, countries of Asia and Eastern Europe O.Shcherbyna identifies two ways of creating investment funds in each particular country. The first method is evolutionary, when, as a result of historical development, entrepreneurs intuitively found the appropriate organizational and legal forms of joint investment, which gave them a number of advantages that are unattainable for an individual small investor. So there were prototypes of future investment funds, there was a class of investors who learned to invest in the securities market, and, accumulating experience on it, contributed to the formation of rules related to joint investment through investment funds. Subsequently, these rules were fixed by law. For decades, the legislative framework for the functioning of the joint investment institutions has been formed. The first way of investment funds' evolving, finding their most relevant forms is typical for the United States and a number of European countries [8, p. 38].

Another way to create investment funds — in the Asian-Pacific region, Eastern Europe, including Ukraine, - is to import joint investment institutions. Along with a new set of investment rules, which differs from the rules of investing in traditional bank deposits, the financial systems of countries have acquired legislation containing the best standards of joint investment worked out for decades in countries where this type of financial intermediation arose evolutionarily. As a result, investment funds appeared in a number of countries for a short period of time, as forms of joint investment [8, p. 38].

Investment funds acquired the largest development in industrialized countries (USA, Canada, Japan, Great Britain, Germany).

Investment companies first appeared in Belgium in 1822, in the U.S. they appeared in the late nineteenth century. The first investment companies were closed investment companies. After the establishment of FRS (Federal Reserve System) in the United States in 1913, which served as a central bank and influenced almost all institutions of the financial system, the monetary system of the country began to develop, which served as a prerequisite for the rapid development of the securities market. In 1924, the first in US open type investment company (mutual fund) was established in Boston, but the development of these institutions was prevented by the Great Depression (1929-1933). Most companies went bankrupt in the early 1930s, and it was only after the adoption of the Law on Securities (1933), the Law on Stock Exchange (1934) and the Law on Investment Companies (1940) that the basis for restoring

investor confidence in joint investment institutions appeared.

After the Second World War, interest in investing into investment companies arose. Offering professional management and diversification of the portfolio of investments to small and medium-size investors, open investment companies were able to raise significant funds for investments in the growing stock market.

Exploring Article 1 paragraph 2 of Directive 85/611/EEC of 20 December 1985 “On coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities”, joint investment institutions are understood as institutions, the only area of activity of which is joint investment in securities subject to circulation and/or other liquid financial assets specified in Article 19 (1) of the Directive, which belong to the funds borrowed from citizens working on the principle of risk distribution and; certificates of which, at the request of the owners, resold or redeemed, directly or indirectly, from the assets of these institutions [2].

In addition, European law in providing investment activities operates several other related concepts: an investment company and an investment firm. From the relevant provisions of Directive 2004/39/EC of 21 April 2004 “On markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC”, it is clear that these two concepts basically coincide in their meaning and mean any legal entity whose permanent activity consists in providing one or more investment services to third parties and/or carrying out one or more types of investment activities on a professional basis [3].

In accordance with Part 2 of Art. 1 Directive 2009/65 EC of 13 July 2009 “On the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities” [10] UCITS fund is an enterprise whose sole purpose is a joint investment of capital received from the public, in securities or other financial assets defined in Art. 50 (1) of this Directive, acting on the principle of distribution of risks, as well as an enterprise with shares that, upon request of the owners, must be redeemed or repaid directly or indirectly from the assets of this enterprise.

UCITS can be established in the following traditional organizational and legal forms mentioned above: 1) common fund, whose assets are managed by the management company — contract form; 2) unit trust (the concept of trust law in common law systems); 3) investment company - corporate form [9, p. 577]. The peculiarity of UCITS funds is that UCITS funds can be different in their organizational form.

Another important subject of collective investment is depository. In accordance with Part 1 of Art. 2 Directive 2009/65, Depository is an institution that has been entrusted with the obligations listed in Articles 22 and 32, as well as set out in Chapter 4 and Chapter 3 of Chapter 5 of this Directive. Based on these provisions, it is found out that the depository is an independent institution from the UCITS fund itself and the investment manager of the UCITS fund, whose main task of which is to store investors' assets. It is important to note that neither the manager nor any ordinary brokers acting as the so-called “counterparts” of the fund, can not be depositories. To protect the rights of investors and more detailed regulation of relations between the depository and the management company, Directive 2010/43/EU “On organizational requirements, conflicts of interest, conduct of business, risk management and the content of the agreement between a depository and a management company” was adopted [10].

The European Social Entrepreneurship Funds (EuSEF) are governed by Regulation (EU) No. 346/2013 of the European Parliament and of the Council of 17 April 2013 “On European Social Entrepreneurship Funds” [11]. Its norms establish uniform requirements and conditions for joint investment funds managers who intend to use the “EuSEF” designation in relation to social entrepreneurship funds in the EU, thereby contributing to their functioning in the EU domestic market. The concept of social entrepreneurship funds provides funds that are aimed at achieving positive social consequences and solving social problems and setting them their as corporate goals, unlike conventional investment funds, in which the main goal is to accumulate profits.

EU legislation, introducing several types of investment funds, thus allows agreeing on the possibility of raising funds in the economy and, with which it is necessary to agree, at the same time allows small investors to invest under extremely flexible conditions [7, p. 513].

So, as S. Hlibko proves, existing regulations and current trends in regulation of joint investment institutions in the EU law indicate diversification of opportunities for investors in terms of placing their investments in various assets depending on the purpose of placement,

types of assets, varying degrees of investment risks, terms of placement, which, on the other hand, allows recipients of various sectors of the economy and social groups to have access to low-cost non-bank financing. However, the regulation does not abolish the sustainable forms of supervision, including prudential, over the operation of joint investment institutions and other participants in the joint investment system, including the right of investors to access relevant information and independent risk assessment [1].

The wide popularity of joint investment institutions around the world is explained by the fact that this type of business effectively combines the interests of all parties involved in the operation of joint investment institutions. It would not have become so widespread if it did not offer money owners prospects more interesting compared to the alternative ways of placing funds.

Thus, joint investment institutions offer a wide range of investment directions, and investors' rights are protected by special laws and regulations for investment funds, the execution of which is strictly controlled. Joint investment institutions provide their participants with a sufficient degree of liquidity of securities, which is especially characteristic of open type investment funds.

The state, in which the appropriate conditions for the operation of investment funds are created, has an effective mechanism for the development of the securities market, which plays a significant role in the intersectoral redistribution of capital, increase the stability of the stock market, stimulate both the internal investment process and foreign investment, contribute to the empowerment of the state for domestic borrowing. The positive role of joint investment institutions in macroeconomic terms confirms the preferential nature of investment funds taxation (or lack thereof), which is typical for national legislation of the vast majority of countries.

Conclusions. Summing up the above, it should be noted that in the world practice activity on trust management of investors' funds is carried out by investment companies and funds, thus for each country there is a specificity. Joint investment institutions play an important role in the stock market of developed countries, creating competition for banking institutions, insurance companies and pension funds. Through investment funds, households can realize their investment opportunities, and corporations, government and local governments mobilize significant investment capital. Thus, the economic growth of the country, the increase in the capitalization of the stock market and the development of the middle class contribute to the formation of active portfolio investors - investment funds.

Regardless of the national specificity, names and peculiarities of formation, modern regulation by the national legislation of such institutions, one can distinguish the features by which they can be classified. JII can exist in the form of both legal entities and without the establishment of a legal entity. In the first case, investment funds are created as joint-stock companies or limited liability companies. The alternative to them are JII of a contractual type when capital exists in the form of a monetary complex — joint ownership of investors and is managed by a third party on a trust basis.

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Abstract

The scientific article analyzes the peculiarities of the legal regulation of the joint investment institutions of the European Union. The concepts and types of joint investment institutions have been defined, the legal regime and the peculiarities of their activity have been analyzed.

The state in which the right conditions for investment funds are created has in their person an effective mechanism for the development of the securities market, which play a significant role in the cross-sectoral redistribution of capital, enhance the stability of the stock market, stimulate both the internal investment process and foreign investment, promote empowering the state with regard to domestic borrowing. The positive role of co-investment institutions in the macroeconomic context is confirmed by the preferential nature of investment funds taxation (or lack thereof), which is characteristic of the national legislation of the vast majority of countries.

Keywords: *joint investment institutions, asset management company, investment funds, trusts.*