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**Public-private partnership in the housing-and-municipal sphere as the mechanism of solution of the social tasks**

*Within the Strategy of development of the housing and communal services in the Russian Federation for the period till 2020 the state made the decision to work a question of use of the other forms of public-private partnership (on the equal basis with concession) for the purpose of attraction of private investments into the housing-and-municipal sphere. Since January 1, 2016 the Federal law of 13.07.2015 No. 224-FL "About the public-private partnership, municipal and private partnership in the Russian Federation and modification of the separate legal acts of the Russian Federation" which purpose is a creation of legal conditions for investment attraction in the economy and improvement of the quality of goods, works, services in different spheres of the national economy, including in the housing-and-municipal sphere works. Use of the mechanisms of public-private partnership in the housing-and-municipal sphere will allow attract investments into the economy and to increase the goods quality, works, services, and also to improve the infrastructure condition. In the article the value of partnership of the state and business for the solution of tasks in the social sphere is revealed.*

**Государственно-частное партнерство в жилищно-коммунальной**

**сфере как механизм решения социальных задач**

*В рамках Стратегии развития жилищно-коммунального хозяйства в Российской Федерации на период до 2020 г. государством было принято решение: проработать вопрос использования иных форм государственно-частного партнерства (наравне с концессией) в целях привлечения частных инвестиций в жилищно-коммунальную сферу. С 1 января 2016 г. действует Федеральный закон от 13.07.2015 г. № 224-ФЗ «О государственно-частном партнерстве, муниципально-частном партнерстве в Российской Федерации и внесении изменений в отдельные законодательные акты Российской Федерации», целью которого является: создание правовых условий для привлечения инвестиций в экономику и повышения качества товаров, работ, услуг в различных сферах народного хозяйства, в том числе в жилищно-коммунальной сфере. Использование механизмов государственно-частного партнерства в жилищно-коммунальной сфере позволит привлечь инвестиции в экономику и повысить качество товаров, работ, услуг, а также улучшить состояние инфраструктуры. В статье раскрывается значение партнерства государства и бизнеса для решения задач в социальной сфере.*

***Keywords:*** *Public-private partnership, consolidation of resources, distribution of risks, cooperation of the public and private partner, agreement on partnership, principles of partnership, control.*

***Ключевые слова:*** *Государственно-частное партнерство*, *объединение ресурсов, распределение рисков, сотрудничество публичного и частного партнера, соглашение о партнерстве, принципы партнерства, контроль.*

For the purpose of further improvement of the housing-and-municipal sphere within the Strategy of development of housing and communal services in the Russian Federation for the period till 2020 [1] the decision to handle the issue of use of the other forms of public-private partnership (on the equal basis with concession) for the purpose of attraction of private investments into the housing-and-municipal sphere was made. It will allow, by the evaluations of the Ministry of Construction of Russia, by 2018 by 1,5 times reduce the level of accident rate and lower the share of budget investments into the housing and public utilities to 30%. Growth of the level of satisfaction of the population with the service quality of housing and public utilities which, by the evaluations of department, shall made "at least 80%" [2] shall become a result of strategy implementation by 2020. It will be promoted by the mechanism use of public-private partnership where in case of the projects implementation the essential condition is "the liability of the private partner in implementation of the goods made by it, performed works, rendered services during the term established by the agreement and also the quality requirement of these goods, works, services", at the same time these quality requirements and to the consumer properties of a subject of the agreement to changes shan't be the subject (item 5 of the article 15 of the Federal law of 13.07.2015 No. 224-FL) [3].

The public-private partnership is understood as "cooperation of the public and private partner which is legally made for the certain term and based on combining of the resources, distribution of risks which is performed based on the partnership agreement". Partnership shall be based on the principles: openness and availability of information on the partnership, except for the data which are the secret protected by the law; ensuring competition; lack of discrimination; equality of participants of the agreement and their equality before the law; fair execution by the agreement parties of agreement obligations; equitable distribution of risks and liabilities between the agreement parties; freedom of the agreement signature.

The Public-private Partnership (PPP) irrespective of the form of business (concessionary agreements, agreements on the state-private and municipal and private partnership) shall meet the following criteria:

– long-term nature (more than 3 years, on concession the term is established depending on the subject of agreement);

– contractual registration of partnership (agreement on the state-private, municipal and private partnership);

– distribution of risks and responsibility between the partners in the projects of public-private partnership;

– complete or partial financing of creation of the object of public infrastructure by the private partner.

As the public agreement party can act:

– The Russian Federation on behalf of which the Government of the Russian Federation or the federal executive body authorized by it acts;

– the subject of the Russian Federation on behalf of which the highest executive body of the government of the territorial subject of the Russian Federation or the executive body of the territorial subject of the Russian Federation authorized by it acts. Also it should be noted that since January 1, 2017 the territorial subject of the Russian Federation within the concessionary agreement will act as the third party, as the guarantor of observance of the terms of agreement [4];

– the municipality on behalf of which the head of the municipality or other authorized body of the local self-government according to the charter of the municipality acts.

The Russian legal entity [5] with which the agreement on PPP (the civil contract between the partners signed for the term at least than three years in a certain order and on the conditions provided by the current legislation) is signed can be the private partner.

Each of the parties in case of the project implementation of PPP pursues the interests, at the same time doesn't forget about the consumer interests (table 1).

The benefit of housing sector is that it is a stable business, in the period of economic instability the support can be rendered to business: subsidizing, direct joint financing. Business carries out the upgrade of infrastructure due to which the quality of utilities for final consumers will increase twice.

*Table 1*

**Benefits of PPP for the economy sectors**

|  |  |  |
| --- | --- | --- |
| **Advantages** **for the public sector** | **Advantages** **for the private sector** | **Advantages to the consumers of services** |
| Opportunity to involve the private investor in financing of creation of the object allows realize the infrastructure projects even in the conditions of lack of budgetary funds, in fact, "by installments", without an increase in a debt load | Opportunity to put a part of risks of revenue onto the public partner (application: minimum guarantee of profitability, payment for availability and other mechanisms of guarantee of recoverability) | Steadily working entities and organizations which render the consumer services |
| Possibility of association within one project of various stages (design, construction and operation) allows increase quality of the created object and to reduce risks of the overestimate of cost of construction and operation | Opportunity to invest in the long-term project with the fixed profitability under guarantees / liabilities of the state | Increase in goods availability, works, services in the territory |
| Opportunity to purchase not the object, and service with the payments tied to amount and the quality of its rendering that also promotes development of the competition in the market of the socially important services | Opportunity to increase the revenue on the project due to the rendering additional paid services and/or application of different decisions reducing the costs | Employment possibility and help in the social arrangement |

*Source: The law on public-private partnership: the application guide (The special edition to the International investment forum "Sochi-2015") / Center of Development of PPP Association, the Ministry of Economic Development of the Russian Federation. – M. : Center of Development of PPP association, 2015. – P. 8.*

Effective use of a subject of agreement is a main goal of activities of the public and private partners, in the housing-and-municipal sphere it is possible to allocate the following objects concerning which there can be the partnership:

– the objects of municipal infrastructure or the objects of municipal services, including power supply facilities; facilities for production, power supply;

– the heat supply objects, centralized systems of hot water supply, cold water supply and (or) water disposal, separate objects of such systems;

– the objects on which handling, accumulating, utilization, neutralization, placement of the solid municipal waste are performed;

– the objects intended for illumination of the territories of residential and rural locations;

– the objects intended for improvement of the territories;

– gas supply facilities.

According to the item 2 of the article 6 of the Federal law of 13.07.2015 No. 224-FL to the private partner within the agreement on PPP assigned the following liabilities: construction and (or) reconstruction (creation) of the subject of agreement; implementation of the complete or partial financing of creation of the subject of agreement; implementation of the operation and (or) maintenance of the subject of agreement. At the same time the private partner of right has a property right to the subject of agreement [6] on condition of encumbrance of the subject of agreement.

Use of mechanisms of PPP in the housing-and-municipal sphere allows attract investments into the economy and to increase the goods quality, works, services, and also to improve the infrastructure condition. So, according to data of the executive bodies of 85 territorial subjects of the Russian Federation (February, 2016) concerning the objects of housing and public utilities were signed and 699 concessionary agreements worked. From them in 2014 112 agreements with amount of investment liabilities in the amount of 7,2 billion rubles, in 2015 – 271 agreements with amount – 70,9 billion rubles were signed [7]. At the same time the number of implementable projects which passed a stage of commercial closing on the terms of concession in 2015 made 654 (table 2).

*Table 2*

**Data on the number of implementable projects of PPP which passed**

**the stage of commercial closing in 2015**

|  |  |  |
| --- | --- | --- |
| **Branch of implementation of the project** | **Level of implementation of the project** | **Number of projects** |
| **Municipal infrastructure** |
| Centralized systems of water supply and water disposals | Municipal | 310 |
| Production and supply of thermal energy | Municipal | 280 |
| Using TKO | RegionalMunicipal | 1123 |
| City improvement | Municipal | 2 |
| **Power infrastructure** |
| Production and distribution of electric energy | Municipal | 25 |
| Lighting of the city and rural settlements | Municipal | 3 |

*Source: The research "Development of public-private partnership in Russia in 2015-2016. Rating of the regions on the level of development of PPP" / Center of Development of PPP Association, the Ministry of Economic Development of the Russian Federation. – M.: Center of Development of PPP association, 2016. – P. 11.*

According to the Ministry of Construction of Russia for July, 2016 in HCC 857 concessionary agreements were signed with the amount of investment liabilities about 84 billion rubles, or 20% of general financing of all investing programs of the resource supplying organizations in the country. As at the All-Russian meeting "The strategy of development of housing and communal services till 2020" the head of the Ministry of Construction of Russia M. Men’ noted, "implementation of concessions allows save the budgetary funds, and at the same time to reduce the number of accidents and claims of the consumers. So, in 35 regions where concessions work, the accident rates in the sphere of heat supply decreased by 47%, in water supply – for 21%, and losses decreased by 18 and 14% respectively" [8].

The Russian Prime Minister D.A. Medvedev noted that "giving of infrastructure to the concession shall lead to that as a result of these agreements our citizens, people who use housing and communal services received just the best quality. Municipal operators in this sense shall work on decrease in the accident rate in the networks, on entering of the energy-saving technologies, be engaged in the saving of water and heat energy, electricity, to reach the established indicators of reliability and the energy efficiency" [9]. However practice shows that it isn't always possible to receive the expected result. So, in the Khabarovsk territory according to the head of the department of investment policy and development of municipal infrastructure of the ministry of housing and public utilities of the territory T. Vlaskina, "on reduction of municipal objects in the standard condition more than 111 billion rubles are necessary, the mechanism of concessions when the private company undertakes the obligation on upgrade of the objects of housing and communal services shall become the main source of upgrade of the housing and public utilities, and payments from the consumers of municipal resource are the source of profit. However the main problem in the involvement of concessionaries is a lack of regulation of the property rights to the objects of housing and public utilities. For the beginning of 2016 about 19% of municipal objects aren't taken in the municipal property" [10] that demonstrates weak control from the authorities.

The control of workmanship of the agreement on PPP is exercised by the public partner, public authorities and the local government bodies, legal entities which are on the side of public partner which based on the agreement have the right of easy access to the subject of agreement and to the documentation relating to implementation of the activities provided by the agreement.

The expert organizations as the controlling persons acting on behalf of the public partner can be also attracted to participation in the control of performance of the agreement. For check of compliance to the project documentation developed by the private partner to the design assignment and other provisions of the agreement if necessary the commissions and expert groups, including with participation of the representatives of private partner can be created.

It is possible to allocate two types of control of workmanship of the agreement on PPP: planned and unplanned.

Planned control is exercised based on the plan (it is made not later than one month before the termination of a year), which affirms the public partner, by the means of holding planned control actions at each stage of implementation of the agreement at least once a quarter. Unplanned control is exercised based on the written addresses received by the public partner from the legal entities, citizens, individual entrepreneurs and public authorities about violation by the private partner of the terms of agreement. These data can become the basis for appeal to the court with the declaration of avoidance of the agreement. For the purpose of check of execution by the private partner of instructions about elimination of the revealed violations the unplanned control, notification on which goes to the private partner by mail the letter by the special delivery not later than 14 calendar days before the date of its carrying out, can be held. In exceptional cases, the difficult and (or) long researches connected with the need of carrying out, testing, special examinations and investigations, based on the motivated proposals of the officials performing holding the control action, term can be prolonged no more, than for 14 calendar days.

According to the item 12 of the order of the Government of the Russian Federation of 30.12.2015 No. 1490 [11] "About implementation by the public partner of control of performance of the agreement on public-private partnership and agreements on municipal and private partnership" implementation of the agreement includes the following stages: development of a subject of the agreement (if development is provided by the agreement); construction and (or) reconstruction of a subject of the agreement; operation and (or) maintenance of a subject of the agreement. For each of stages of implementation of the agreement the subject of control which is exercised by the public partner is established.

When holding the control actions checking within the competence has the right: to independently determine methods and the sequence of actions when holding the control actions; to request the extract from the Unified State Register of Legal Entities issued not earlier than in 3 months prior to the date of control actions, and also the documents confirming implementation by the private partner of capital investments, and the other documents characterizing activities of the private partner; to fix the facts of counteraction to holding the control actions, including the provisions checking unreliable, incomplete information or its untimely provision, and also the unauthorized access to the saved up by checking information and the other facts; to perform survey of the real estate objects of the private partner including which are under the construction and reconstructed, survey of the fixed assets of the organization and the purchased equipment (if necessary with carrying out photo, video filming) for the purpose of receipt of the objective picture of a condition of execution by the private partner of the terms of agreement.

The private partner when holding the control actions has the right: to be present when holding the control actions; to offer the comments and explanations on the questions relating to the subject of control actions; to study the act of results of the control of performance of the agreement and to give on it the motivated objections (in case of need) in writing with the application of the relevant documents; to appeal against the actions checking according to the current legislation of the Russian Federation.

The results of control actions are arranged by the public partner no later than 5 working days from the date of their termination by the act of the results of control [12]. References, explanations, documents or their copies concerning the held control events including the confirmatory facts of violations in cases of their identification are attached to the act. If as a result of holding control actions the fact of non-execution by the private partner of t the erms of agreement is elicited, the public partner within 5 working days from the date of expiration for appeal of the results of control of performance of the agreement, sends to the private partner the notification on elimination of the revealed violations with giving the terms of their elimination. If the private partner in the terms specified in such notification didn't eliminate violations, the public partner has the right to take a legal action with the statement for the early agreement cancelation.

As we see, the control takes not the last place in implementation of the Programs of complex development of the systems of municipal infrastructure, investing the programs of organization of the municipal complex, or the projects implementation of complex development of the territories on the principles of public-private partnership in the case of accomplishment of different tasks for the purpose of housing-and-municipal construction. At the same time, it is necessary to consider also the specifics of control in the housing and communal services.

The purpose of control of performance of the agreement are the detection and prevention of violations by the private partner of the terms of agreement including connected with the rendering services to the consumers [11]: heat, gas and power supply; also the cold water supply, water disposal; improvement of the territory; handling, utilization, neutralization, placement of the solid municipal waste; illumination of the territories of residential and rural locations.

Also it should be noted that at the beginning of 2016 the Ministry of Construction and Housing and Communal Services of Russia suggested "to forbid "economic maintaining" since January, 2018 as the form of government municipal infrastructure, having transferred the all unitary enterprises to the concession" [13]. The Ministry of Construction also plans to toughen the requirements to transfer to the concession of infrastructure facilities and to create in the housing sector of 7-8 national players. This initiative was supported by the Government of the Russian Federation.

Thus, great hopes are laid on a new form of relations. These circumstances adoption of the Federal law of 13.07.2015 confirms No. 224-FL which purpose is creation of legal conditions for investment attraction in the economy and improvement of the quality of goods, works, services in different spheres of the national economy, including in the housing-and-municipal sphere. Control innovations in the housing-and-municipal sphere are connected with the new mechanism of interaction of the authorities and business by the means of partnership.

***Literature and the sources:***

*1. Стратегия развития жилищно-коммунального хозяйства в Российской Федерации на период до 2020 г. : утв. расп. Правительства РФ от 26.01.2016 г. № 80-р // Собр. законодательства РФ. – 2016. – № 5. – Ст. 758.*

*2. Опубликована Стратегия развития ЖКХ до 2020 г. 26.07.2016 г. // Официальный сайт Министерства строительства и жилищно-коммунального хозяйства Российской Федерации [Электронный ресурс] –.–URL.: http://www.minstroyrf.ru.*

*3. О государственно-частном партнерстве, муниципально-частном партнерстве в Российской Федерации и внесении изменений в отдельные законодательные акты Российской Федерации : федер. закон от 13.07.2015 г. № 224-ФЗ // Собр. законодательства РФ. – 2015. – № 29. – Часть 1. – Ст. 4350.*

*4. О внесении изменений в Федеральный закон «О концессионных соглашениях» : федер. закон от 03.07.2016 г. № 275-ФЗ // Собр. законодательства РФ. – 2016. – № 27. – Часть 1. – Ст. 4208.*

*5. Примечание: Частным партнером не может выступать юридическое лицо, которое находится под контролем Российской Федерации, ее субъекта, муниципального образования, а также иных юридических лиц созданных для реализации функций и задач органов государственного и муниципального управления.*

*6. Примечание: В рамках концессионных соглашений право собственности на объект отсутствует, данное положение прямо закреплено в Федеральном законе «О концессионных соглашениях» // О концессионных соглашениях : федер. закон от 21.07.2005 г. № 115-ФЗ (в ред. от 30.12.2015 г.) // Собр. законодательства РФ. – 2005. – № 30. – Часть 2. – Ст. 3126*

*7. О привлечении частных инвестиций в жилищно-коммунальное хозяйство. 07.05.2016 г. [Электронный ресурс] // Официальный сайт Правительства Российской Федерации –.–URL.: http://government.ru.*

*8. Всероссийское совещание «Стратегия развития жилищно-коммунального хозяйства до 2020 г.».22.07.2016 г. [Электронный ресурс] // Официальный сайт Министерства строительства и жилищно-коммунального хозяйства Российской Федерации –.–URL.: http://www.minstroyrf.ru.*

*9. Деньги на коммуналку // Рос.газета (Столичный выпуск). – 2016. – № 7008 (140).*

*10. Трубы на сезон // Коммерсантъ (Хабаровск). – 2016. – № 110.*

*11. Об осуществлении публичным партнером контроля за исполнением соглашения о государственно-частном партнерстве и соглашения о муниципально-частном партнерстве :пост. Правительства РФ от 30.12.2015 г. № 1490 // Собр. законодательства РФ. – 2016. – № 2. – Часть 1. – Ст. 365.*

*12. Примечание: Акты о результатах контроля над исполнением соглашения, содержащие сведения, составляющие государственную тайну, оформляются с соблюдением положений, предусмотренных законодательством Российской Федерации о защите государственной тайны.*

*13. Минстрой предлагает до 2018 г. передать в концессию все ГУПы и МУПы без исключения (23.03.2016 г.)[Электронный ресурс] // Единая информационная система государственно-частного партнерства в Российской Федерации –.–URL.: http://pppi.ru.*