Middle-East Journal of Scientific Research 15 (9): 1224-1228, 2013
ISSN 1990-9233

DOI: 10.5829/idosi.mejsr.2013.15.9.11540

# Formation of the Special-Purpose Capital of the Non-commercial Organization as a New Form of the State-and-private Partnership in Russia

*Elena Genrikhovna Komissarova and Olga Anatolyevna Kuznetsova*

Perm State National Research University, Perm, Russia

**Abstract:** On the basis of the thesis of the state-and-private partnership as an instrument of the Russian social and economic policy, the legal regulation on the non-commercial organization special-purpose capital creation relations are analyzed. The special-purpose capital of the non-commercial organizations in Russia is the analogue of the foreign endowment. Russian federal law "On the Order and Usage of the Special-Purpose Capital of Non-Commercial Organizations" is characterized. In the sphere of the legal regulation of the special-purpose capital, the Russian Federation as a party of the state-and-private partnership established a special regime of the taxation of the special-purpose capital and requirements for the information transparency of its usage, limited the number of the possible investment operations with that capital and defined the order of forwarding the special-purpose capital to the managing company for the confidential management.

**Key words:** State-and-private partnership · Non-commercial organizations · Co-financing · Contract for the special-purpose capital confidential management · Investment relations · Return on special-purpose capital

## INTRODUCTION

The traditional model of the economic subject functioning based on the state financing is a thing of the past. In Russia, the instruments of the state-and-private partnership resting on the well-developed practice of the international experience were introduced into the social economic tools [1-5]. The principal idea of such a partnership is in finding the sources of additional investments and increasing the efficiency of the budgetary financing [6-9]. The "Public-Private Partnership (PPP)" concept developed abroad is an alternative to the privatization of the vital, having strategic importance objects of the state property.

The essential analysis of the state-and-private partnership as the economic and the social phenomenon allows to include it into the term of "cooperation". The international experience, the practice obtained in Russia and scientific research of different branches on the state-and-private partnership in Russia show the participants of such cooperation. In the classical variant it is the state and the private business. The "private business" notion refers to the terminological units having economic origin. Similar to other countries, it occurred in Russia due to the necessity to differentiate between the state and non-state participation spheres and their subsequent coexistence in social and economic life in accordance with the unshakable rule of the market economy saying that the private property is a general rule and public (municipal) property is a unavoidable exception from it.

In the legal meaning, the "private business" is limited first of all by the list of the business legal structures (economic partnerships and commercial company; production cooperatives; business partnerships; state and municipal unitary enterprises). Secondly, it is limited by the individual proprietors (Article 23 of the Russian Federation Civil Code). Thirdly, in the conditions of the necessity to get a legislative permission for carrying out additional activities bringing income, the private business also adds to this segment.

As the analysis of the numerous state-and-private partnership definitions shows, practically all of them have the above-branch character, i.e. they do not fit the subject of regulation of the existing branches of law. The scientists' proposal to adopt a complex legal act for this purpose serve as a compensating factor for such state of things. With this, there are serious doubts about the "working capacity" of such an act, clearness of its wording and preciseness of the possible juridical constructions which can fill it. It is reasonably noticed in

**Corresponding Author:** Komissarova, Perm State National Research University, Bukireva st., 15, 614990, Perm, Russia.

the literature that "at the phase of the realization of the agreements obtained within the framework of the state-and-private partnership execution in the property and investment sphere and in the cultural projects implementation, the state bodies directly mentioned in the corresponding documents, are not independent participants of the civil relations but act in this case within the limits of the realization of regulations defined in Item 1 of Article 125 of the Russian Federation Civil Code, i.e. in the order provided for the civil and legal regulation of the direct participation of the state in the civil turnover" [10]. Such a legal approach both for the private business and the state helps to eliminate the indefiniteness of the juridical parameters of the state-and-private partnership and the necessity to fix its definition in the legislation.

Special legal regulation of the state participation in the social sphere as a form of the state-and-private partnership. The state-and-private partnership perception through the prism of the organizational alliance consisting of the state and the private business subject that act on its territory, allows to see such a partnership form (which is mostly accepted today as "on default") that normatively describes the conciliatory interaction of the state and the structures created by the state.

The financing of the non-commercial organizations was always based on the usage or involving of many sources. Their list has been rather diversified. Every source included into that list adds to such a non-commercial organization characteristic as its property self-sufficiency, although it is difficult to overcome their investment resources deficiency. In the conditions of the social sphere demonopolization it was necessary to find a new balanced and rational concept of the interaction between the state and the non-commercial organizations concerning rendering the social services by the latter. This is because in case there are no non-commercial organizations, the state would be supposed to solely provide for the social benefits. At the same time, the state does not have the right to fully forward this function to the commercial organizations.

The extent of the state participation in the economic development of the non-commercial organization is different. As for one group of them, the state completely distances itself from the direct investment participation in their current activities process; and the state establishes trust supporting obligations with the other group of non-commercial organizations providing for their partial co-financing. The third group of non-commercial organizations get the normative basis for creating the agreement models of the investment involvement into their activity sphere at the expense of the private business. The example of such regulation is Federal law #275-FZ "On the Order and Usage of the Special-Purpose Capital of Non-Commercial Organizations" introduced on December 30, 2006 (hereinafter referred as the Special-Purpose Capital Law). Its norms are aimed at regulating the relations with the participation of such non-commercial organizations as funds, public funds, public organizations, religious organizations, autonomous non-commercial organizations.

The new interpretation of the state participation in the "property fates" of the non-state organizations does not exclude, but vice versa – increases – the state's interest in the financial stability of the non-commercial sector of the economy at the expense of bringing other, non-state, investments.

Before this law was adopted, a question was raised about the help rendered by the business to the state in realizing the national projects. The result was referring to the ideas of the foreign endowment that received the name of the *special-purpose capital* in the Russian legislative practice.

Formation of the special-purpose capital as the agreement model of the non-commercial organizations financing under the state's control. The legal form of the special-purpose capital was adopted with introducing of the Special-Purpose Capital Law. In accordance with Article 2 of the Law – "it is a part of the property of a non-commercial organization which is formed and renewed at the expense of the donations given in the order and for the purpose provided by the law and (or) at the expense of the property under the will and also at the expense of the non-used income received for the trust management of the mentioned property; this part of property is given by the non-commercial organization to a managing company for the trust management fulfillment to get the income used for this of other non-commercial organization activities as defined by the Charter". The special-purpose capital filling at the moment of its formation is allowed from the monetary resources, the sources can also be securities and immovable property. As the source of the non-commercial organization activity financing, the special-purpose capital has significant differences from other sources (entry fee, fixed contribution, membership fee; regular and single payment from the founders: voluntary property fee; money and property fee from the founders; usual donations by physical and legal persons exercising their right of property).

Practically every norm of the Special-Purpose Capital Law is filled with the idea that the income on the special-purpose capital usage cannot and should not be used for the purpose of the private benefication. In the legislator's opinion, the obtained income can be used only in such spheres of the non-commercial organization activities as education, science, health service, culture, physical training and sports (except for the professional sport), arts, archiving, social help (support), environment protection, free juridical consulting for the citizens and legal education, functioning of the mandatory free Russian public TV channel.

For obvious reason, the economic approach dominates in the research of the nature and the essence of the special-purpose capital. With the reference to the international experience and its sources [11-15], numerous researches are carried out in the Russian economic science aimed at learning the special-purpose capital theory. In this sphere the scientists declare that the essential specifics of every capital as an economic category is unified and finally always reduces to "the cost that brings earned value". Therefore, the main purpose of the capital is in its capacity to bring income. In its economic purpose, the nature of the special-purpose capital of the non-commercial companies turns to be similar to the nature of the capital aimed at the additional profit creation, but used for special purposes with no using the capital itself for the needs of the owner.

A comparatively little attention of the legal science representative to the special-purpose capital [16, 17] does not provide for the study of the other noneconomic side of this phenomenon which would allow to see direct and indirect state participation. The mechanism of forming the profit of special-purpose capital as the private asset is complicated and in the conditions of the unstable Russian stock market is also. This is the reason for the necessity of the state participation at the different phases of both the capital formation and the profit made with it. The time and the practice of the Special-Purpose Capital Law application will show if this participation is efficient. So far, we deem it reasonable to enumerate the types of such participation.

The special purpose capital is the private assets. The most efficient state participation in the private property relations sphere is associated with the improvement of the tax legislation. For the first time in the post-Soviet period, in accordance with Item 2 of Article 251 of the Russian Federation Tax Code, the following special-purpose receipts are not taken into account when calculating the taxable income:

- money, immovable property, securities received by the non-commercial companies for forming or increasing the special-purpose capital stock;
- money received by the non-commercial organizations (the owners of the special-purpose capital) from the managing companies that have the special-purpose capital property in their trust management in accordance with the Special-Purpose Capital Law;
- money received by the non-commercial organizations from the specialized companies controlling the special-purpose capital.

Besides, the money or property transfer for the non-commercial organization capital forming or increasing is also not an object of the VAT taxation.

The Special-Purpose Capital Law gives significant attention to the information clearness of the special-capital formation process. The clearness is associated not only with the duty of non-commercial organizations to provide the reports and have a site in the Internet, but also with the control by the donators for the use of the special-purpose capital and the profit made with it.

In accordance with Article 5 of the Special-Purpose Capital Law, the donators have the right to receive the information on forming the special-purpose capital, its increasing, the income for the trust management and the usage of this income.

As it was numerously noted, the special-purpose capital refers to the private investment assets. In case with the public investment assets (for example, the capital of the retirement fund), the state has the direct participation in the investment policy of the professional intermediaries – the managing companies. In case with the special-purpose capital, the state participation is also in force, although it is less strict. The vivid example of this is Article 15 of the Special-Purpose Capital Law which gives the exhaustive list of the possible investment operations with the special-purpose capital.

Similar to other investment laws this list covers less risky and more conservative financial tools. The state with its own participation, tries to reduce the risks for the non-commercial companies investing the special-purpose capital, by prescribing to make the financial operations with securities among the first as they are deemed to be the most reliable financial tools. All the other norms regulating the investment relations on the special-purpose capital comply with the same targets.

In accordance with the regulations of the special-purpose capital law, the leading method of getting profit on the special-purpose capital is making financial deals

(Article 15 of the Special-Purpose Capital law). The possibility to make such deals is not included into the contents of the legal capacity of the non-commercial organizations owning the special-purpose capital, such non-commercial organizations are created for satisfying the social and the spiritual needs of people. The norms of the Special-Purpose Capital Law prescribe to apply for these functions to the subjects of the entrepreneurial business having the corresponding experience and qualification. Such subjects are the managing companies acting on the basis of the property trust management contract, the essence of which is in forwarding the special-purpose capital to the trust management for getting the income, with the simultaneous protection of this private special-purpose property from financial risks and losses.

## CONCLUSION

The development of most efficient and successful patterns of the private capital investment potential realization, including the special-purpose capital as one of the types of the private capital, is a question of the Russian economic future discussed in special literature [18]. So far, this side of the special-purpose capital relations is the one least known to the non-commercial organizations which are not quite experienced in the financial business issues. For this reason, the state-established requirements are actual associated with the necessity to forward the capital for controlling to the professional participants of the market and applying the tested (although softened) investment scheme for this assets that was earlier adopted in the current legislation for public subjects. This scheme is characterized by the strict list of the investment objects and by different limitations aimed at keeping the invested assets safe and protected from risks and losses. In the special-purpose capital relations, there is no distribution of risks between the state and the investor, similar to the risk distribution in case with the public assets, but there is such a state control method as the exhaustive list of the investment sources for the managing company.

## REFERENCES


1. Closing America`s the Infrastructure Gap: The Role of Public-Private Partnerships. A Deloitte Research Study, 2006. Date Views 25. 07. 2013 www.deloitte.com/assets/Dcom.UnitedStates/Local%20Assets/Documents/us_ps_PPPUS_final(1).pdf
2. Darrin, G. and K. Mervyn, 2007. Mervyn K. Lewis Public Private Partnerships: The Worldwide Revolution in Infrastructure Provision and Project Finance. Edward Elgar Publishing.
3. 2010. Leading the way. Infrastructure Investor CANADA An Intelligence Report., 11. Date Views 25. 07. 2013 www. infrastructureinvestor. com.
4. Graeme, A., H. Hodge, G. Carsten and E. Anthony, 2010. Boardman International Handbook on Public-Private Partnership. London: The Stationary Office, pp: 332.
5. United States Department of Transportation. Report to Congress on Public-Private Partnerships. December 2004.. Date Views 25. 07. 2013 www.fhwa.dot.gov/reports/pppdec2004/pppdec2004.pdf.
6. Katkalo, V.S., 2007. Development and Realization of the Special-Purpose Capital Formation. The Role of the Council for the Special-Purpose Capital Usage. Proceedings of Russian Forum “Charity in the Regions of Russia: Problems and Development Perspectives”. St. Petersburg: нет, pp: 1-183.
7. Ahinova, G.A. and I.N. Myslyaeva, 2008. Social Function of the State in the Conditions of the Russian Economy Innovative Development. M: Max Press, pp: 220.
8. Tulchinsky, G.L., 2006. Fundraising: Finding Financial Resources for Non-Commercial Activity. SPb: References of St Petersburg, pp: 32.
9. Subanova, O.A., 2011. Funds of the Special-Purpose Capitals of Non-Commercial Organizations: Formation, Management, Usage. M: Kurs, pp: 120.
10. Golubtsov, V.G., 2008. Legal Forms of the Agreement Realization in the State-and-Private Partnership. Materials based on Panel Discussion “Legislation on the State-and-Private Partnership in the Russian Federation: Problems, Tendencies, Perspectives”. Russian Law Magazine (Zhurnal Rossiyskogo Prava), 10: 15-24.
11. Core, J., W. Guay and R. Verdi, 2006. Verdi R. Agency problems of excess Endowment holdings in not-for-profit firms. Journal of accounting and economics, 1: 48.
12. 2009. Endowment spending policy fact sheet. News from Princeton University, 1: 11.
13. Frey, D., 2002. University endowment returns are underspent. Challenge, July-August, pp: 109-121.
14. Ramsden, D., 2008. Insights into the Yale formula for endowment spending. Yale magazine., 1: 32 www.yale.edu/investments/Yale_Endowment_08.pdf.

15. Rezaee, Z., R. Elmore and D. Spiceland, 2004. Endowed chairs in accounting worldwide. Accounting Education., 13(1): 29-50.
16. Habeev, T.N., 2009. Special Purpose Capital of Non-Commercial Organizations: Notion, Juridical Contents and economic Efficiency. Education and Law (Obrazovaniye I Pravo)., 10: 43-47.
17. Grishaev, S., 2010. Trust Management of the Special-Purpose Capital of the Non-Commercial Organizations. Economy and Law (Khozyaistvo I Pravo), 9: 109-112.
18. Osobenkov, O., O. Shchegortzev and M. Shchegortzev, 2011. Alliance of the State and the Capita. M: OAO Tipografiya Novosti, pp: 328.