

Theme 2:

Investment - law norms and legal relationships. Investment contracts

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Plan

- 1. Characteristic peculiarities or features of investment relations
- 2.

Characteristic peculiarities or features of investment relations:

- 1) the legal relationship as a special kind of social relations;
- 2) the legal relations are developed on the basis of legal provisions, which express the will of the state;
- 3) the legal relationship are a kind of public relations, which develops as a result of conscious-volitional actions (СОЗНАТЕЛЬНО-ВОЛЕВЫХ ДЕЙСТВИЙ) of their members;
- 4) relationships define many and diverse connections of the participants carried out by assigned to them subjective rights and legal responsibilities that come along with a set of real actions aimed at their use and implementation, form the content of the legal relationship

Characteristic features of relations

- 1) the legal relationship is a kind of public relations, which is cloaked (облачена) in legal form;
- 2) the legal relationship is formed on the basis of the rule of law;
- 3) subjects of legal relationship are specifically identified;
- 4) parties legal relationship always have subjective rights and legal responsibilities ;
- 5) legal relationship has consciously willed character;
- 6) legal relationship are protected by state (where necessary, is provided with the coercive power (принудительной силой) of state).

With regard to the investment relations these features are disclosed in the following way:


- **Firstly**, in the process of realization of investment activity there is a set of social relations, in the first place, the nature of the property, but only those who are clothed in legal form, may be recognized as investment relations.
- **Secondly**, investment relations developed on the basis of norm of law are legal relationships, it is possible to include legal relations arising on the basis of the contract, as the law allows the opportunity to enter into contracts and to determine rights and duties that are not directly provided for by law, nor prohibited by it.
- **Thirdly**, in the subjects are specifically identified in the investment relations (investors and investors).

- **Fourth**, parties in the investment relationship have mutual (offsetting-корреспондирующими) rights and obligations.
- **Fifth**, in contrast to the economic relations, which are formed objectively and independently from the will of the individual, the investment relationship have always conscious and volitional nature, because the subjects of investment relations realize their rights and obligations through the willful and deliberate (сознательных) actions.
- **Sixth**, the state creates conditions which are necessary for the full implementation of legal norms, as a rule, subjective rights are performed without the use of state coercion(принуждения), and in most cases the performance of legal duties, but if necessary, such measures can be taken (e.g. in case of breach of rights and legitimate interests of investors).


- Legal relationship can be described as public relations arising on the basis of the law, the participants (actors) of which have a mutual subjective rights and legal obligations, secured and protected by state.
- Accordingly, in a general way investment relations are public relations which are regulated by investment and legal norms
- However, the investment legal relations may be administrative and financial and accordingly, they have features for all publicly-legal relations in general, and some of them in particular.

- Investment relations are regulated by norms of different branches of law (civil, administrative, financial law and others), and at the same time they are combined into one group of relations governed by a complex branch of law - Investment law.
- Investment relations is a complex legal relationship since it has at the same time private law and public law beginning.

- Investment relations - it is a legal relationship that arises on the tangible or intangible benefits, invested by the investor in the objects of entrepreneurial and other activities for profit (income) and (or) to achieve a positive social effect.
- Relationships can be selected: banking and investment, leases, etc.

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- Investment relationship, stay at the same time with civil - legal relationships, administrative relations and other legal relations, which are regulated both by the main branches of law, and complex branch of law - Investment law.
 - There is the legal classification of relations which depend depending on the number of parties involved and the nature of the distribution between rights and responsibilities.

- Basically two approaches are distinguished - unilateral and bilateral legal relations, or in addition to them multilateral legal ones.
- Unilateral legal relationships are characterized by the fact that each of the parties involved is in relation to the other party, or just have rights, or only duties.
- Investment relationships according to this classification may be unilateral legal relations (for example, the relations arising under a contract of donation of securities) and bilateral legal relations (investment relationship).

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- The investment relationships are regulatory legal relations, as investment rules touch all the recipients, they have the same legal personality
 - According to the sectors relationships have a definite meaning on the division substantive (материально-правовые) and procedural relationship (процессуальные отношения.)

- Material relations arise on the basis of the substantive law norms and they regulate social relations by providing directly a subject of rights and duties; whereas legal proceedings arise on the basis of procedural rules and have the organizational, administrative character, since the implementation of the procedure includes the rights and duties of subjects
- The main criterion here is the membership of the relevant legal norms of substantive or procedural law. Based on this classification, the investment relationship are substantive relations.

- The investment relationship as a kind of property relations, can be differentiated into absolute and relative terms.
- Investment property relations, as a rule, are relative relationships.
- Such investment relationships can be:
 - relations on the conclusion, dissolution or termination of investment contracts (agreements);
 - relations to provide state support for investment;
 - relations in the implementation of investment projects;
 - relations connected with the resolution of investment disputes.

- Investment relationship can be developed without the conclusion of the investment agreement; the conclusion of the investment agreement is necessary because the relationship between all involved in the implementation and realization of the investment project is based on the contract.
- Thus attitude on the creation of the investment object, and the relations according to its legal fate (on the transference of property to the operational management, economic management or for the temporary use).

- According to the Law on investment the investor has the right to compensation for damage caused to him by the publication by public authorities acts inconsistent with legislative RK acts, as well as a result of illegal actions (inaction) of their officials, in accordance with the Civil law (Sec. 2, Art. 4).

- The criteria for the division of investment relations: the object of investment, the purpose and timing of the investment.
- So, depending on the object of investment investment relations are divided into legal relations connected with the Real Estate law (вещным правом) ownership, with the investments in property rights; and relations connected with the intellectual property.

- В зависимости от цели инвестирования: правоотношения, связанные с получением личного дохода от инвестиционной деятельности; и правоотношения, связанные с достижением положительного социального эффекта от инвестиционной деятельности.
- И, наконец, в зависимости от сроков инвестирования, выделяют разовые (покупка ценных бумаг) и долгосрочные (строительство какого-либо объекта) инвестиционные правоотношения

- Most investment relations are characterized with profit (income) and are associated with the achievement of positive social effect (since, ultimately, the implementation of investment contributes to economic growth and welfare of the population);
- Investment relations, run positive social impact (intellectual investment) and may be associated with the receipt of income (for example: the return of money paid under the educational loan).

- Purchase of securities can be attributed to "one-off" investments, if the investor immediately sells them, and perhaps the short, medium, long-term or even non-fix term investments (i.e. investments, not limited with time).
- By the nature of the legal capacity of investors as participants in investment relationships there can be distinguished proper investment relations and the relations arising in the process of state support of investments.

- Depending on the investor's affiliation to a particular state - investment relations with foreign investors and investment relations with the participation of national investors.
- Property relations are crucial (определяющими) in the understanding of the nature of the investment as a legal category.
- Then, as the decisive criterion is their legal status, which, in turn, is not the set (устанавливать) for investments, but for the behavior of the subjects (participants) of investment relations.

- Public and private (where the main thing is - investments in whose ownership they are).
- Investment relations, where the State is the investor. They are different from other types because of high planning and strict control by the state through its organs.
- They are carried out at three levels: national, local and central (respectively, involving the Government of Kazakhstan, the central and local executive bodies).

- According to sources of financing state (budget) investments are divided into investments made with public funds (state or local budget) and investments made at the expense of borrowed funds (state loans and credits).
- Private investment can also be carried out at the expense of their own or borrowed funds (including and state).
- In the case of attracting public funds investor, the state has no right of ownership, but only the right to claim (Liability law-обязательственное право), so this kind of investment refers to private investment, rather than to the state.

- All arising from this investment relations have specific characteristics and their characteristic features.
- For example, investments made by legal or natural persons from its own funds, different from the rest with the greatest freedom and transparency of investment projects, as investors themselves determine the facilities and funding, they can choose partners, organize and control the entire investment process, as well as define the obligations and any other terms of the relationship with the participants of the investment activity.
- If investments are made at the expense of borrowed funds, the investment relations are becoming more complex, and have a higher risk and a lower level of profitability.

- в процессе оказания государственной поддержки прямых инвестиций предполагалось и решение таких задач, как создание новых рабочих мест; внедрение системы непрерывного обучения местных кадров, повышение уровня их квалификации; улучшение окружающей природной среды (однако для этого предоставлялись значительные льготы и преференции).

- Object of investment - the two main blocks - tangible assets and intangible assets (материальные активы и нематериальные активы.).
- The first group of investment relations include: investment relations, which are the object of production infrastructure: agriculture; transport; building; natural resources (including the subsoil); and etc.
- The second group - investment relationship where the object are: securities; services; intellectual property; law, etc. property and other real estate rights etc.