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The Legal Framework of the Investment Agreement as A Prerequisite for Achieving the Interests of the Parties to the Public-Private Partnership

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Abstract

The purpose of the article is to examine specific features of relations in the field of investment activity arising as a result of concluding relevant investment agreements, and to propose theoretical and practical directions for intensifying these relations with a view to satisfying public and private interests within the framework of public-private partnership. The article is based on a set of various methods of scientific cognition described in the relevant subsection. The methods include: classical methods of analysis and synthesis, comparative legal method and comparative studies method, historical method, dialectical method, formal legal method, modern methods based on hermeneutical approaches, systemic and structural method, comparison method, grammatical and systematic methods of interpreting legal provisions, modeling method, economic analysis methods, functional method, etc. The result of the study is a proposed classification of investment treaties into groups for use in practice and legislation, a proposal to adjust the role of the state in investment processes, and a clarification of certain elements of investment treaties, including the procedure for concluding investment treaties in the direction of simplification, etc. The author proposes to legitimize the term "investment treaty" in the theory, legislation and practice of different countries and interstate entities with its division into two large groups: "macroeconomic (public) investment treaties" and "microeconomic (private) investment treaties".

1. Introduction

Investment activity is an integral part of the modern economy of any country. Without internal and external injections, even the most developed economies are doomed to gradual decline, stagnation, decline and lagging behind the economies of other countries. There are many examples in the history of world development. A developed economy needs investments to continue its development and to improve its performance as well as an economy in times of crisis, martial law, and post-war recovery to mitigate the effects of the crisis and prevent default.

Shapovalova and Tereshchenko conclude that the public–private partnership (PPP) mechanism can be adapted to attract investment for the reconstruction of Ukraine's scientific infrastructure, which would indirectly have a positive impact on post-war economic recovery. At the same time, one of the factors constraining the development of mutually beneficial cooperation within the system of relations between business and science is the unmet need to

improve the legislative framework in the field of public–private partnership[1]. The statutory definition of public–private partnership, provided in Part 1 of Article 1 of the Law of Ukraine "On Public-Private Partnerships," is characterized as cooperation carried out on a contractual basis in accordance with the procedure established by legislative acts[2]. Thus, PPPs operate as a contractual governance regime, and therefore their effectiveness depends on the design of the underlying investment agreements. In turn, weak definitional clarity and regulatory fragmentation lead to non-standardized PPP contracts, generate legal risks, and reduce investor confidence.

Investments are often considered to be long-term investments in industry, the financial and banking sector, agriculture and other sectors of the economy at domestic and international level for the purpose of generating profit[3]. In other words, investments are considered to be an active process. The legislation, in particular the Law of Ukraine "On investment activity", considers investments to be "all types of property and intellectual property invested in business and other types of activities that generate profit (income) and/or achieve social and environmental effects"[4]. This means that the law considers "values" – tangible and intangible objects as investments. The essence of investment activity is reduced to certain practical actions taken by citizens, economic entities and the state to implement investments.

The form of realization of investments is a contract, which can be conditionally called an investment agreement. The legislation of Ukraine and many other countries provides for the possibility of carrying out investment activities by entering into agreements. The provisions of legislative acts, however, often do not refer to such agreements as "investment" agreements. Society often understands an "investment" agreement as a mortgage agreement or an installment purchase agreement for residential real estate in one's own country or another. Society also often uses the term "investment agreement" and "innovative agreement" in a narrow sense for agreements where a foreign investor is one of the parties[5].

Shyshka[6], using the analysis of Kossak[7], Simson[8] and other scholars, identifies dozens of types of investment agreements by economic and legal features, objective criteria, and material object as follows: agreements for investment of property owned by the investor; agreements

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[1] Olga Shapovalova and Serhiy Tereshchenko, "Adaptation of Public-Private Partnership Instruments to the Needs of Rebuilding Scientific Infrastructure," *Law and Innovations* 1, No. 45 (2024): 102-108, https://doi.org/10.37772/2518-1718-2024-1(45)-14.

[2] Verkhovna Rada of Ukraine, *Law of Ukraine No. 436-IV "Economic Code of Ukraine"* (2003), https://zakon.rada.gov.ua/laws/show/436-15#Text.

[3] Bogdan Derevyanko, *Legal Regulation of Investment and Innovation Activities: A Textbook* (Donetsk: Publishing House "Kalmius," 2012).

[4] Verkhovna Rada of Ukraine, *Law of Ukraine No. 1560 "On Investment Activities"* (1991), https://zakon.rada.gov.ua/laws/show/en/1560-12?lang=uk#Text.

[5] Bogdan Derevyanko, "On Formation and Activities of Specialized Investment Court of Ukraine," *Entrepreneurship, Economy and Law*, no. 3 (2020): 323–27, https://doi.org/10.32849/2663-5313/2020.3.54.

[6] Roman Shyshka, "Investment Agreements: Characteristic and Classification Attempts," *Law Herald* 4, no. 33 (2014): 118–22, http://nbuv.gov.ua/UJRN/Npnau_2014_4_24.

[7] Volodymyr Kossak, *Legal Principles of Foreign Investment in Ukraine* (Lviv: Ivan Franko National University of Lviv, 2016).

[8] Olha Simson, "The legal nature of public-private partnership relations in the innovation sphere," *Bulletin of the Academy of Legal Sciences of Ukraine* 1 (2012): 233–241, http://nbuv.gov.ua/UJRN/vapny_2012_1_25.

for investment of property rights; agreements for investment of intellectual property rights. The other criteria for investment agreements include a capital construction agreement, an agreement for the creation and transfer of scientific and technical products, a concession agreement, a leasing agreement, a joint investment agreement, international agreements on cooperation in the field of innovation, etc. International investment treaties between states and domestic and international investment treaties with or without the participation of states between investors and recipients are distinguished by the level of the parties to the treaties.

The various aspects, processes and relations related to investment activities, their legal regulation, protection of investors' and recipients' interests, study of certain elements of the legal regime of investment treaties, etc. have been the focus of attention of both Ukrainian and foreign researchers such as lawyers, economists, and specialists in other sciences and fields of knowledge. Kravchuk[9] studied the processes of formation of legislation on the protection of foreign investments, which influenced the current state of these processes and the content of investment treaties. Strilets[10] studied the trends in the conclusion of interstate investment treaties between EU member states and third countries. Titi[11] analyzed the various processes in the EU and its member states towards the development and legitimization of a new generation of international investment agreements. The EU member states paid attention to investing in renewable energy in the 2000s, in particular through the conclusion of various contracts that can be fully considered investment contracts[12]. Some researchers have drawn attention to the suspension of funding for European electricity sector development projects and, by analyzing the content of relevant investment treaties, have sought ways to revitalize this work, in particular through the conclusion of more different investment treaties with bonuses for the European energy sector[13]. Matveev[14] focused on comparing investment and innovation activities and characterizing innovation agreements as types of investment agreements. Chaban[15] studied the general provisions on investment agreements and, among other things, paid attention to joint investment activity agreements and concession agreements.

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[9] Maryana Kravchuk, "Formation and Development of International Legal Protection of Foreign Investments," *Juridical Scientific and Electronic Journal* 5 (2016): 160–62, http://dspace.tneu.edu.ua/handle/316497/6109.

[10] Bohdan Strilets, "Competence of the European Union and EU Member States on Bilateral Investment Agreements," *Law Review of Kyiv University of Law* 1 (2016): 337–42, http://nbuv.gov.ua/UJRN/Chkup_2016_1_78.

[11] Catharine Titi, "International Investment Law and the European Union: Towards a New Generation of International Investment Agreements," *European Journal of International Law* 26, no. 3 (2015): 639–61, https://doi.org/10.1093/ejil/chv040.

[12] Arne Kildegaard, "Green Certificate Markets, the Risk of Over-Investment, and the Role of Long-Term Contracts," *Energy Policy* 36, no. 9 (2008): 3413–21, https://doi.org/10.1016/j.enpol.2008.05.017.

[13] Gauthier de Maere d'Aertrycke, Andreas Ehrenmann, and Yves Smeers, "Investment with Incomplete Markets for Risk: The Need for Long-Term Contracts," *Energy Policy* 105 (2017): 571–83, https://doi.org/10.1016/j.enpol.2017.01.029.

[14] Petro Matveev, "Investment Contract as a Component of Innovative Activity at the Current Stage of Development of Ukraine," Our Law 10 (2014): 129–32, http://nbuv.gov.ua/UJRN/Nashp_2014_10_25.

[15] Olena Chaban, *Investment Agreements (Contracts)* (Lviv: Ivan Franko National University of Lviv, 2013).

Sushch[16] provided a general description of the special investment agreement, which, based on the Law of Ukraine "On state support for investment projects with significant investments in Ukraine" of December 17, 2020, is concluded between the Cabinet of Ministers of Ukraine, an investor with significant investments, an applicant, a local government body and determines the procedure and conditions for the implementation of an investment project with significant investments[17]. The researcher identified legal features, characterized the essential terms of such an agreement and other elements of its legal regime[18]. Komar[19] identified and characterized the features of investment contracts in construction in comparison with other agreements. Gordiienko[20] analyzed the components and defined the types of capital construction contracts as investment contracts. Lozytska[21] studied the legal nature of contracts related to investment in the environment, and the legal nature of investment relations in terms of financial and legal regulation was the subject of research by Blikhar[22]. Gurenko[23] studied the aspects of concluding investment agreements with a view to achieving public interests within the framework of public-private partnership. Maniruzzaman[24] examined the relationship between foreign investors in the energy sector and recipient developing countries, political and economic risks, and possible conflicts. Rym[25] emphasized the peculiarities and consequences of invalidation of an agreement concluded in the investment sphere, which is equally important as the consequences of concluding a particular investment agreement. Ilkiv[26] paid attention to the emergence of trust property relations on the basis of an investment

[16] Olena Sushch, "Legal Characteristics of Special Investment Agreement," *Law and Innovations* 1, no. 41 (2023): 40–48, https://doi.org/10.37772/2518-1718-2023-1(41)-6.
[17] Verkhovna Rada of Ukraine, *Law of Ukraine No. 1116-IX "On State Support for Investment Projects with Significant Investments in Ukraine"* (2020), https://zakon.rada.gov.ua/laws/show/1116-20#Text.
[18] Shafa Guliyeva, "Legal Shortcomings of Accounting for Leasing Operations in the Legislation of the Republic of Azerbaijan and Proposals for Their Solution," *Legal Horizons* 16, no. 1 (2023): 65–75, https://doi.org/10.54477/LH.25192353.2023.1.pp.65-75.
[19] Yevhen Komar, "Ways of Improvement and Current Situation of Legislative Regulation of Investment Contracts in Construction," *Scientific Bulletin of the International Humanities University* 10-2, no. 1 (2014): 196–99, https://www.vestnik-pravo.mgu.od.ua/archive/juspradenc10-2eng/part_1/56.pdf.
[20] Andrii Gordiienko, "Contract for Capital Construction as an Investment Contract," *Subcarpathian Law Herald* 5, no. 20 (2017): 60–64, http://www.pjv.nuoua.od.ua/v5_2017/17.pdf.
[21] Kateryna Lozytska, "The Legal Nature of Investment Agreement in the Sphere of Investment in the Environment," *Uzhhorod National University Herald* 25 (2014): 119–23, https://dspace.uzhnu.edu.ua/jspui/handle/lib/8139.
[22] Mariia Blikhar, *Legal Nature of Investment Relations: Financial and Legal Regulation* (Lviv: Lviv Polytechnic National University, 2018).
[23] Marya Gurenko, "Guarantees of the Rights and Legitimate Interests of the Parties of the Investment Agreement with the Participation of Public Authorities and Local Governments," *Actual Problems of the State and Law* 89, (2021): 8–14, https://doi.org/10.32837/apdp.v0i89.3183.
[24] A. F. M. Maniruzzaman, "The Pursuit of Stability in International Energy Investment Contracts: A Critical Appraisal of the Emerging Trends," *The Journal of World Energy Law & Business* 1, no. 2 (2008): 121–57, https://doi.org/10.1093/jwelb/jwn012.
[25] Taras Rym, "Some Aspects of the Research of the Problems of Invalidation of Contracts Concluded in the Investment Sphere," *Law Herald* 3 (2020): 103–10, https://doi.org/10.32837/yuv.v0i3.1910.
[26] Oleh Ilkiv, "Investment Agreement as a Ground Trust Property Relations," *Visegrad Journal on Human Rights* 2 (2021): 192–96, https://journal-vjhr.sk/wp-content/uploads/2021/06/VJNR_2_2021-1.pdf.

agreement. The search for ways to resolve disputes related to the implementation of investment activities was the subject of research by Kropova[27].

A large number of researchers have also chosen investment activities mediated by investment treaties and investment relations that arise, change and/or terminate based on these treaties as the subject of their research. But certain unexplored issues remain, and therefore require analysis, clarification, improvement, and enhancement. Shapovalova and Hudima[28] divide investment agreements into main venture investment agreements and security agreements. The former includes: a venture capital investment agreement; a joint venture agreement between investors. The latter include: an agreement of intent to invest; an agreement of shareholders of the company's participants; an agreement on keeping information confidential; a memorandum of association; a contract for the sale of securities of an innovative enterprise; a loan agreement for the production of an innovative product; an option agreement; a consulting services agreement; a risk-sharing agreement; an agreement for the sale of a share of the authorized capital or securities of an innovative enterprise owned by a venture capitalist; a share repurchase agreement; a contract for joining the sale[29].

The issue of classification of investment treaties is not the main and decisive one for their legal regime and for increasing the efficiency of investment activity. The Ukrainian researcher recognizes the vagueness and inconsistency of regulatory and legal support as one of the main disadvantages of investment activity. Various laws and regulations governing the conclusion, execution, and termination of investment agreements contain contradictory and unclear provisions, which complicate their practical application. The lack of a clear definition of "investment agreement" leads to ambiguous interpretation and application of this concept[30].

The general requirements of Ukrainian legislation rightly indicate that the terms of such agreements remain in force for the entire duration of the contracts. However, the statutory definition of the key terms relevant to specific types of economic activity and spheres of public life would contribute to an increase in the number of such agreements concluded. In the case of a statutory definition of an "investment agreement," potential investors would more clearly understand that a given contract falls within this category; consequently, they would obtain certain state guarantees regarding the stability of its terms and the non-application of the principle of retroactivity of the law to provisions that could worsen their rights. Accordingly, the level of public–private partnership should increase as investor participation in the implementation of state projects, or projects in which the state or local territorial communities have an interest, increases.

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[27] Anastasiya Kropova, "Investment Dispute Settlement Mechanism," *Law Review of Kyiv University of Law* 2–4 (2022): 69–72, https://doi.org/10.36695/2219-5521.2-4.2022.11.

[28] Olga Shapovalova and Tetiana Hudima, "Conceptual Principles of Legal Influence on the Development of Venture Investment," *Economics and Law* 36, no. 2 (2024): 5–10, https://doi.org/10.15407/econlaw.2013.02.005.

[29] Darid Al-Hayali, "Methods of Funding Innovations and Sources of Investment Capital in Ukraine," *Legal Horizons* 18, no. 3 (2024): 8–18, https://doi.org/10.54477/LH.25192353.2023.3.pp.8-18

[30] Mykhaylo Ivanets, "Investment Contract as a Basis for Obtaining Housing: Theory and Practice Problems," *Uzhhorod National University Herald* 82, no. 1 (2024): 383–87, https://doi.org/10.24144/2307-3322.2024.82.1.61.

The efficiency of investment at the macro level (state level) and at the macro level (level of individual business entities: enterprises, institutions, organizations) and their associations, which may act as domestic or foreign investors or recipients of domestic or foreign investment, depends on the type of investment agreement, its content – essential and optional terms, the complexity of its development and negotiation and, therefore, the method of its conclusion, as well as other factors. For the first time, the article proposes a structured classification of investment treaties based on the composition and legal nature of the parties involved, dividing them into macroeconomic (public) and microeconomic (private) investment agreements. This approach allows for a more precise definition of their legal regime and better differentiation between agreements concluded with state participation and those existing solely between private entities.

The novelty also consists in substantiating theoretical and practical directions for intensifying investment relations within the framework of public-private partnership. The research formulates proposals to simplify the procedure for concluding investment agreements, enhance investor protection guarantees, and improve the state's regulatory role in investment processes. These developments contribute to improving the legal framework of investment activity and to harmonizing Ukrainian legislation with international standards. Systematization of investment agreements, simplification of the procedure for their conclusion, ensuring effective implementation, compliance by states with guarantees of protection of investors' interests, etc., will contribute to the intensification of investment activity by increasing the activity of domestic and foreign investors.

2. Methods

Complexity and comprehensiveness of the issues raised make it possible to define the goal, set objectives, and achieve them to the maximum extent possible using a significant number of general and special methods of cognition. The use of these methods in combination increases the likelihood of achieving the result of clarifying the known and generating new knowledge about the legal support of investment agreements, promoting the unification of their content and simplifying their conclusion, and revitalizing investment activity with due regard for its economic and social components. The use of classical methods of analysis and synthesis allowed the author to review the works of previous researchers, identify gaps in the elements of the legal regime of investment treaties available in the law, legislation and law enforcement of different countries, and reveal insufficiently studied aspects of concluding, amending, executing, terminating investment treaties, and protecting the interests of their parties in pre-trial and judicial proceedings.

The comparative legal method and the comparative method in conjunction with the historical method made it possible to compare the provisions on different types of investment treaties concluded at different times between participants to the investment process in advanced and developing countries, and to draw conclusions and suggestions for the development and improvement of their legislation in the future. Among other things, the author showed the trends in the development of legislation in advanced countries aimed at ensuring the development of domestic investment, supporting innovation, and trends in the development of investment legislation in developing countries in the direction of attracting

foreign investment through the provision and observance of guarantees of their protection, ensuring the sustainability of investment legislation, etc.

The application of the dialectical method made it possible to confirm that potential parties to investment agreements mainly follow the classical procedure for concluding various investment agreements and, in combination with the formal legal method, to propose the use of a simplified procedure for concluding many of such agreements, in particular through the proposal to develop model and model agreements. The use of the dialectical method contributed to the formulation of a proposal for the content and practical use by participants in investment relations of alternative ways of concluding investment agreements, such as through the mechanisms of model, model agreements and accession agreements. In combination with modern methods based on hermeneutical approaches, the article formulates proposals for wider application of methods of concluding investment agreements remotely using modern technologies on the Internet.

The systemic and structural method has made it possible to distinguish among others and form a coherent system of types of investment treaties, which is conditionally divided into two major parts depending on the parties to the treaties, which are conditionally aimed at achieving public interests and are concluded between states. It is proposed to call them macroeconomic or public investment treaties and treaties conditionally aimed at achieving private interests and concluded between different participants in investment activity. Agreements where at least one of the participants is not the state, and it is proposed to call them microeconomic or private investment agreements. This method, in combination with the methods of analysis and synthesis, was used to identify, characterize and compare the essential and optional terms of various "lower" level investment treaties, which are called microeconomic or private investment treaties. By applying the method of comparison, and also the grammatical and systematic methods of interpretation of legal provisions, the author proposes to name these types of investment treaties as microeconomic or private and macroeconomic or public.

The analytical and synthetic method made it possible to characterize a microeconomic (private) investment agreement for the construction of residential or industrial real estate as the most common classical investment agreement, and to identify its structural elements - purpose, subject matter, cost, term, methods of enforcement, pre-trial and court settlement of misunderstandings, application of liability measures, and other elements of the legal regime of this agreement. The modeling method, system-structural and economic analysis methods allowed the author to propose the structure of a typical or exemplary microeconomic (private) investment agreement: determination of its subject matter, price, term, list of obligations of the parties and possible risks of each party, methods of pre-trial dispute resolution through mediation, and liability of the parties for non-fulfillment and improper fulfillment of obligations under the agreement.

The article uses the systemic-structural and functional methods to determine the role of the state in its relations with other states when negotiating the terms of macroeconomic (public) investment agreements, as well as when negotiating them within the framework of public-private partnership with residents, business entities, citizens and their associations, about taking into account the wishes regarding the terms in the form which is optimally

beneficial for the latter. The use of a combination of analysis and synthesis methods, historical, comparative legal, modeling and other methods has confirmed the idea of the need to expand the range of specialized judicial institutions which will protect the rights of investors, recipients, the state and other participants to relations in the field of investment activity.

3. Results and Discussion

The term "investment agreement" is interpreted differently by participants in the investment process, as well as by legislative, executive and judicial authorities. Therefore, at the first stages of research, it requires an analysis of its purpose in order to effectively divide it and further classify its components to improve them. The sectoral affiliation of certain investment treaties may also be considered different. This means that investment treaties are a collective term that can cover and extend this name to a large number of agreements of different legal natures. Some researchers believe that investment treaties in the field of investment in the environment belong to environmental law treaties[31].

Currently, many business entities are trying to improve the environmental friendliness of their products through various contractual mechanisms to bring them to other markets through investment and innovation contracts[32]. Other researchers generally recognize the entire nature of investment relations as financial and legal[33]. This principle can be used to classify investment contracts as belonging to a certain separate, independent, or complex branch of law and branch of legislation, as well as to the sphere of economic and human activity, with the participation of which subjects (investors and other participants in investment activity) or in favor of which subjects (recipients) investment activity is carried out.

The analysis begins with the fact that the term "investment treaty" may include two groups of treaties with completely different levels and powers of the parties. Investment treaties are conventionally referred to as agreements concluded between states or between the highest executive authorities of states. These agreements provide for the states to undertake obligations for mutual protection of investments and guarantees of their return in the event of changes or amendments to legislation. This first large group of investment treaties is conventionally called international investment agreements and is divided into three main categories:

1. bilateral investment treaties signed by two states;
2. regional investment treaties signed by groups of states within the same region;
3. multilateral investment treaties, conventions and chapters of integrated trade and investment agreements that may be signed at the bilateral or regional level.

In other words, some researchers justifiably understand investment treaties as interstate agreements that provide for investment conditions and guarantees of protection of the interests of national investors by recipient states, including protection against expropriation,

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[31] Kateryna Lozytska, "The Legal Nature of Investment Agreement in the Sphere of Investment in the Environment," *Uzhhorod National University Herald* 25 (2014): 119–23, https://dspace.uzhnu.edu.ua/jspui/handle/lib/8139.

[32] Guowei Liu, Hengfei Yang, and Rui Dai, "Which Contract Is More Effective in Improving Product Greenness under Different Power Structures: Revenue Sharing or Cost Sharing?" *Computers & Industrial Engineering* 148 (2020): 106701, https://doi.org/10.1016/j.cie.2020.106701.

[33] Mariia Blikhar, *Legal Nature of Investment Relations: Financial and Legal Regulation* (Lviv: Lviv Polytechnic National University, 2018).

confiscation, guarantees of non-interference with nationalization or other similar measures against investment objects.

Kravchuk[34] points out that since the early 1970s, the response of developed countries to the threat of expropriation without compensation has been to conclude bilateral investment treaties. These bilateral treaties were uniform in content and contained several differences: 1) they dealt exclusively with investments; 2) they were mainly concluded between developed and developing countries; 3) the motive for concluding them for developing countries was to attract investments; 4) the motive for concluding them for developed countries was to protect investments; 5) the network of treaties remained rather limited; 6) the means of protecting foreign investment were similar to those contained in modern trade and navigation treaties: guarantees of national treatment and most favored nation treatment for investments, obligations to pay prompt, adequate and effective compensation in the event of expropriation, and restrictions on currency controls. The conclusion of such treaties, which can be called investment treaties, protected the interests of investors and allowed business and social entities in developing countries to receive such investments at the end of the twentieth century.

The problem, similar to that of the 1970s, was noticed in the late 2000s by Maniruzzaman[35]. The governments of some developing countries, primarily in Latin America, tried to nationalize foreign investment. In order to overcome the problem of protecting foreign investment, stabilization mechanisms were urgently developed and adopted in the relevant legal instruments: international investment contracts, treaties, and national legislation. Some developing countries have introduced special investment stability regimes for foreign investors.

The preferential investment regime for foreign investors was popular at the turn of the twentieth and twenty-first centuries. Many countries that are considered to be offshore zones of the world still use it. Alschner and Skougarevskiy[36] developed and proposed a new approach to analyzing a large sample of investment treaties based on four different levels, based on the postulate that advanced countries tend to develop and propose the content of investment treaties, while developing countries often agree to the proposed content and rules of interpretation of treaty provisions. In other words, it can be said that recipients – business and social entities in developing countries compete for the most lenient conditions for investment and withdrawal of profits for foreign investors.

The developing countries adopt the relevant regulations of their own free will or under pressure from their companies in need of investment and agree to enter into interstate bilateral investment treaties on the terms developed, prescribed, and offered to them by developed countries. Recipient country companies interested in domestic and foreign investment take

[34] Maryana Kravchuk, "Formation and Development of International Legal Protection of Foreign Investments," *Juridical Scientific and Electronic Journal* 5 (2016): 160–62, http://dspace.tneu.edu.ua/handle/316497/6109.

[35] A. F. M. Maniruzzaman, "The Pursuit of Stability in International Energy Investment Contracts: A Critical Appraisal of the Emerging Trends," *The Journal of World Energy Law & Business* 1, no. 2 (2008): 121–57, https://doi.org/10.1093/jwelb/jwn012.

[36] Wolfgang Alschner and Dmitriy Skougarevskiy, "Mapping the Universe of International Investment Agreements," *Journal of International Economic Law* 19, no. 3 (2016): 561–88, https://doi.org/10.1093/jiel/jgw056.

measures to ensure the faithful implementation of investment agreements concluded at the "micro level," i.e., between them and direct investors.

The study of the causal relationship between the faithful fulfillment of contracts and investment volumes was conducted by scientists from Uruguay. The researchers were unable to prove the existence of a direct, stable relationship in all cases. However, researchers assume that there is one, and also point out that many countries that are potential recipients of investments attempt to show potential investors that they have an effective legal and political system and that most contracts between different entities in the country's legal field are fulfilled[37]. The diligent performance of contracts by states as recipients of investment and by their business entities as recipients does not contradict, but rather complies with the public-law principles governing PPPs, in particular the principles of legality, justice, equality before the law, and others.

Accordingly, this enhances the protection of investors' interests, ensures the stability of investment agreement terms against deterioration, and, as a result, contributes to an increase in the number of concluded investment agreements and to higher volumes of foreign investment. On the other hand, non-fulfillment or improper fulfillment by recipient companies of the terms of contracts with foreign investors through the implementation of the signaling function of a business contract will deprive such companies of the very possibility of receiving investment in the future. Moreover, this function may go beyond the characterization of a particular company, spreading negative publicity to the entire region or country as a whole. The economic literature, using the example of investments by high-tech foreign companies in Chinese firms, indicates that entities from regions where local firms and employees are more conscientious in fulfilling their contractual and job responsibilities have a better chance of receiving investments[3839].

Competitive rivalry for investors' attention is, inter alia, a competition for the most consistent observance of the public-law principles governing PPPs. Under these principles, business entities, acting based on the rule of law, equality before the law, proportionality, good faith, and other principles, are expected to perform their obligations toward counterparties–investors, while the state oversees compliance with these principles and, guided by the principles of humanism, democracy, impartiality, and equality of recipients and investors regardless of their nationality, ensures the unilateral stability of investment agreement terms based on the rule of law and the equality of all contracting parties before the law. The balance of interests between investors and host governments determines the success of treaties. Cooperation plays an important role in economic development and investment sustainability. The treaties are based on theoretical principles of international law, such as the principles of

[37] Diego Aboal, Nelson Noya, and Andrés Rius, "Contract Enforcement and Investment: A Systematic Review of the Evidence," *World Development* 64 (2014): 322–38, https://doi.org/10.1016/j.worlddev.2014.06.002.

[38] James S. Ang, Yingmei Cheng, and Chaopeng Wu, "Trust, Investment, and Business Contracting," *Journal of Financial and Quantitative Analysis* 50, no. 3 (2015): 569–95, https://doi.org/10.1017/S002210901500006X.

[39] Huanming Wang, Bin Chen, Wei Xiong, and Guangdong Wu, "Commercial Investment in Public–Private Partnerships: The Impact of Contract Characteristics," *Policy & Politics* 46, no. 4 (2018): 589–606, https://doi.org/10.1332/030557318X15200933925414.

non-discrimination and national circulation law, which form the basis for the parties' obligations. The problems in concluding and resolving disputes require careful consideration, ensuring trust between the parties. It is important to use innovation and cooperation in the development of standards for the sustainable development of investment relations to improve treaties[40].

Titi[41] points out that at the level of the EU member states and the EU itself as a subject of international law, the transition from the old-fashioned "European" approach to a new model or standard of investment treaty is underway. The development of such a standard treaty is taking into account the provisions of investment agreements that were originally developed and proposed in North America. She believes that the emergence of an officially approved EU Model Agreement is ahead, which will legitimize a new generation of international investment treaties. Article 179 of the now-repealed Commercial Code of Ukraine provided for the possibility of concluding an economic (commercial) contract, including an investment agreement, not only under the general rules but also based on a model contract, a standard contract, or an adhesion contract [42]. The conclusion of model and standard contracts, as well as adhesion contracts, is carried out in compliance with the principle of legality. The conclusion of standard investment agreements may most often take place in accordance with the rules governing the conclusion of adhesion contracts.

The EU does not have a model investment agreement (model bilateral investment treaty) with third countries. As the EU Commission in its Communication COM/2010/343 stated, such a model is neither possible nor desirable. The EU should take into account the specific conditions in each negotiation, in particular, the interests of European investors, the level of development of partnerships with third countries, as well as the specifics of existing bilateral investment treaties between EU member states and these countries[43]. The absence of model investment treaties between the EU and third countries does not mean that there are no model or exemplary investment treaties proposed for conclusion between direct participants in investment activities from EU Member States and other countries.

It is evident that the content of contracts, as well as the methods of conclusion and performance of international investment agreements concluded between states, and international investment agreements concluded between direct investors and recipients from different states, differ in nature. The former level primarily pursues public interests, whereas the latter primarily serves private interests. Accordingly, disputes arising from intergovernmental agreements are to be settled by the International Court of Justice. Part One

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[40] Olha Tsybulska, "Expropriation in International Law and Problems of Its Implementation in Ukraine," *Analytical and Comparative Jurisprudence* 4 (2023): 612–15, https://doi.org/10.24144/2788-6018.2023.04.95.

[41] Catharine Titi, "International Investment Law and the European Union: Towards a New Generation of International Investment Agreements," *European Journal of International Law* 26, no. 3 (2015): 639–61, https://doi.org/10.1093/ejil/chv040.

[42] Verkhovna Rada of Ukraine, *Law of Ukraine No. 436-IV "Economic Code of Ukraine"* (2003), https://zakon.rada.gov.ua/laws/show/436-15#Text.

[43] European Commission, *Communication COM/2010/0343 Final from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards a Comprehensive European International Investment Policy* (2010), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010DC0343.

of Article 34 of the ICJ Statute states: "Only states may be parties in cases before the Court"; and in the first part, Article 38 of the ICJ Statute provides that the Court, in resolving disputes between states, applies four categories of sources of law[44].

In resolving disputes arising from investment agreements concluded between states and individual business entities of other states, or between business entities-investors and recipients from different states, proceedings are conducted based on the substantive and procedural law and legislation of one of the contracting parties, or on the law and legislation of a third state, as agreed by the parties to the contract or the dispute. However, in both cases, regardless of the level of public character of the legal framework for investment agreements, guarantees for the rights and interests of investors must be equally protected on the basis of respect for the law and international law.

Many Ukrainian researchers use the category of "international investment treaty," which is an agreement between a state and a foreign investor or between states aimed at establishing the rights and obligations of the parties related to investment activities. This agreement is considered a legal instrument that regulates relations between investors and host states and provides them with legal status and protection[45]. It should be noted that the last article of the aforementioned Law of Ukraine "On investment activity" – Article 22 is entitled "International agreements". There is no definition or components of the legal regime of the relevant international treaty in a single provision of this article. It only refers to an international treaty to which Ukraine is a party. In case such a treaty establishes rules other than those contained in the legislation on investment activity of Ukraine, the rules of the international treaty shall apply[46]. A legal act of Ukraine specialized in the legal regulation of investment activity calls an international investment treaty between the state of Ukraine and another state or a participant in relations in the investment sphere an investment treaty. The researchers, whose arguments were cited above, would classify such a treaty as an investment treaty. It is possible to do so in legal theory, law enforcement practice, and legislation.

In general, it can be suggested that the category of "investment treaty" be applied in legal practice and legitimized in the legislation of different countries with its legitimized division into a macroeconomic investment treaty, to which two or more countries will be parties and which will concern the general terms and conditions of investment activity; a microeconomic investment agreement, at least one of the parties to which will be a separate business entity established in any legal form under the laws of any country, an association of such entities or a person or group of people, which will determine the terms and conditions of investment in a specific object in the territory of a certain country by a certain investment entity from that or another country. Similarly, to the division of joint stock companies into two types: public joint stock companies and private joint stock companies, alternative names can be provided, respectively: public and private investment agreements. Considering the purpose

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[44] International Court of Justice, *Statute of the International Court of Justice* (1945), https://www.icj-cij.org/statute.

[45] Olha Tsybulska, "Expropriation in International Law and Problems of Its Implementation in Ukraine," *Analytical and Comparative Jurisprudence* 4 (2023): 612–15, https://doi.org/10.24144/2788-6018.2023.04.95.

[46] Verkhovna Rada of Ukraine, *Law of Ukraine No. 1560 "On Investment Activities"* (1991), https://zakon.rada.gov.ua/laws/show/en/1560-12?lang=uk#Text.

of the agreements, though, both types of agreements combine the pursuit of public and private interests. Therefore, it is suggested that the article uses the terms proposed above in relation to investment treaties.

Currently, for example, Ukrainian legislation does not distinguish between public and private investment agreements. In the event of their legalization, it would be appropriate to codify provisions on public investment agreements within legislation on international cooperation and foreign economic activity, while provisions on private investment agreements should be included in other norms of legislation on international cooperation and foreign economic activity, as well as in domestic legislation governing economic activity in general, including investment, innovation, construction, manufacturing, agro-industrial, transport, trade, and other sectoral activities. It also seems logical to include both types of investment agreements (public and private) in international treaties on the promotion and protection of investments between the state of Ukraine and other states (signed by the presidents of both states) and between the governments of Ukraine and other states (signed by the heads of the respective governments).

In this context, public investment agreements can also be divided into two types: 1) agreements on the promotion and support of investments; and 2) specific public investment agreements in which states are the contracting parties. The possibility of concluding private investment agreements between states and business entities of other states, as well as between business entities of different states, should be specified in these bilateral intergovernmental agreements. Similarly, public and private agreements can be considered as instruments for safeguarding the interests of the respective participants in Free Trade Agreements. The rights and obligations of the contracting parties are determined by the investment agreements themselves. Only the recipient states act as guarantors (including financially) to foreign investors regarding the inadmissibility of any deterioration in the terms of the agreements. An illustrative example is the Tecmed v. Mexico case. Although the public, environmental activists, and residents expressed concerns about the investor's activities, the ICSID (International Centre for Settlement of Investment Disputes) found the recipient state to be in breach of the investment agreement, specifically liable for the expropriation of the private investor's investment, imposed a penalty on the state, and ordered the restoration of the investor's permit[47].

A similar example is the dispute between a U.S. investor, the company Azurix, and the state of Argentina. In this case, the state and its local government authorities, in violation of the 1991 bilateral treaty on the promotion and protection of investments between the Argentine Republic and the United States, breached the terms of a concession agreement with the investor. The investor injected capital into a local municipal enterprise responsible for water supply and wastewater management. The ICSID decision determined that the state of Argentina had failed to provide fair treatment to Azurix's investments, had not ensured their protection, and, through its actions, had interfered with the investor's ownership and use of its investments. As a result, Argentina was ordered to pay the investor compensation

[47] International Centre for Settlement of Investment Disputes, *ICSID Case No. ARB(AF)/00/02* "*Técnicas Medioambientales Tecmed S.A. v. The United Mexican States*" *("Tecmed v. Mexico")* (2003), https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB(AF)/00/2.

equivalent to the market value of the concession (over USD 165 million), plus interest on the outstanding amount calculated at the average six-month deposit rate, accruing from 60 days after the decision was communicated to the parties until the principal sum was fully paid by Argentina[48].

In another landmark case between a state and a foreign investor – Metalclad v. Mexico – the tribunal largely ruled in favor of the investor. The investor, Metalclad Corporation, had invested funds in developing a landfill, although it had not actually commenced operations, while the state of Mexico effectively expropriated the invested funds. The tribunal did not accept the investor's proposals regarding the calculation of lost profits but ruled that the state must compensate the investor for the damages caused, to restore the position that would have existed had the state not violated the investor's rights[49]. The examples presented illustrate the obligation of the state to comply with the terms of existing investment agreements and to ensure that business entities – recipients of investments also adhere to these terms. On the other hand, the examples cited do not only demonstrate the obligations of the state under its concluded public and private (according to this classification) investment agreements, as well as its role as a legal guarantor for agreements between foreign investors and recipients. If the investor is the party in breach, the courts, based on the principles of legality and equality of all contracting parties before the law, render decisions in favor of the state, as was the case in Parkerings-Compagniet AS v. Republic of Lithuania[50].

The focus of microeconomic (private) investment agreements on achieving public and private interests is widespread in the world today, as pointed out and studied by scholars. Thus, it is important to study various aspects of concluding investment agreements that have the dual purpose of generating profit and providing social benefits[51], which fits well into the scheme of public-private partnerships implemented through microeconomic (private) investment agreements. There are a large number of them, which were noted at the beginning of the paper. The question of their separate analysis should be answered.

Microeconomic (private) investment agreements are used in various areas and sectors of the economy and social sphere between business entities, citizens, and their associations of one or more countries. The state may also be a party to such agreements. The increase in the number of such agreements and the degree of efficiency of their implementation depend on the attractiveness and clarity of their terms, as well as the simplicity of their conclusion. These aspects need to be studied on the example of various microeconomic (private) investment agreements. This problem with determining the essential and other terms of an investment

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[48] International Centre for Settlement of Investment Disputes, *ICSID Case No. ARB/01/12 "Azurix Corp. v. Argentine Republic" ("Azurix v. Argentine")* (2006), https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/01/12.

[49] International Centre for Settlement of Investment Disputes, *ICSID Case No. ARB(AF)-97/1 "Metalclad Corp. v. United Mexican States" ("Metalclad v. Mexico")* (2000), https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB%28AF%29/97/1.

[50] International Centre for Settlement of Investment Disputes, *ICSID Case No. ARB/05/8 "Parkerings-Compagniet AS v. Republic of Lithuania"* (2007), https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/05/8.

[51] Christopher Geczy, Jessica S. Jeffers, David K. Musto, and Anne M. Tucker, "Contracts with (Social) Benefits: The Implementation of Impact Investing," *Journal of Financial Economics* 142, no. 2 (2021): 697–718, https://doi.org/10.1016/j.jfineco.2021.01.006.

agreement is raised by Van Aaken[52], who notes in particular that changing the terms of investment agreements is a common characteristic of them. The contract theory suggests that too rigid and inflexible contracts may worsen the mutual income of the contracting parties. Therefore, when concluding investment agreements of certain types, rationality and proportionality should be observed between the mandatory terms and conditions proposed in the draft agreements and those that may be determined by agreement between the parties, and determine the legal regime of the agreement, including aspects of its proper performance.

The development and offer to potential participants of standard and model investment agreements of various types seems logical. Potential investors and recipients will only have to agree to the proposed standard terms and conditions and enter into an agreement. The young researcher has identified and proposed the general features on which the essential terms of a standard construction contract should be based: a significant degree of detail should be applied to the provisions dedicated to a specific type of construction contract. It should have a significant degree of detail; dedicated to a specific type of construction contract (not construction contracts "in general"); aimed at fair and balanced distribution of risks between the parties; a great deal of attention should be paid to intensive communication between the parties, coordination of their joint efforts; provisions for settlement of disputes from the contract, primarily by the parties themselves out of court, have a significant place[53].

As a result, the subject matter, cost, term, list of obligations of the parties and possible risks of each party, methods of pre-trial dispute resolution through mediation, liability of the parties for non-performance and improper performance of obligations under the agreement, etc., can be developed and specified in the draft investment agreement for the construction of a particular facility. Practical mass use of a single, standardized form of an investment agreement for the construction of residential or industrial real estate will help to quickly eliminate gaps in the agreement and clarify its essential terms and their details.

Ilkiv [54] states that proper fulfillment of the terms of the investment agreement for the construction of housing will entitle the investor (principal) to take ownership of the housing upon completion of construction, and the developer (manager) to receive funds (investments) from the investor for the construction of housing. The manager's powers to possess, use, and dispose of the invested funds have the characteristics of trust ownership and are derived from the investor's ownership rights related to the purpose specified in the property management agreement.

An investment agreement in construction cannot be equated with a sale and purchase agreement due to the nature of its essential terms, since its implementation does not result in the transfer of ownership of the constructed property from the recipient to the investor, who actually becomes the first owner of the construction property. The difference between a construction investment agreement and a contractor-type agreement is that the investor has

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[52] Anne van Aaken, "International Investment Law between Commitment and Flexibility: A Contract Theory Analysis," *Journal of International Economic Law* 12, no. 2 (2009): 507–38, https://doi.org/10.1093/jiel/jgp022.
[53] Andrii Gordiienko, "Contract for Capital Construction as an Investment Contract," *Subcarpathian Law Herald* 5, no. 20 (2017): 60–64, http://www.pjv.nuoua.od.ua/v5_2017/17.pdf.
[54] Oleh Ilkiv, "Investment Agreement as a Ground Trust Property Relations," *Visegrad Journal on Human Rights* 2 (2021): 192–96, https://journal-vjhr.sk/wp-content/uploads/2021/06/VJNR_2_2021-1.pdf.

no authority to interfere with the construction process and does not have independent rights to the construction and the land on which it will be carried out[55]. The judge of the commercial court should agree with the integrated use of various investment agreements in the construction sector.

These agreements are aimed at achieving the result - the commissioning of a completed construction project. Invalidation of any transaction from the system of investment agreements in the system of contractual relations in the construction sector may be used as a remedy[56]. The investment agreement for the construction of residential or industrial real estate is a classic microeconomic (private) investment agreement that provides for the emergence and placement of a new real estate object on the balance sheet of a business entity, city, region, state or other subject of law. This agreement can be widely used during the post-war reconstruction of the economy and social sphere of Ukraine and other countries that will face the need to overcome the consequences of the war.

Under the terms of a public-private partnership, the state, other states, international and domestic organizations may act as investors or participants in investment activities, the contractor will construct the real estate object, and former servicemen and/or family members of deceased military personnel will receive ownership, lease or use on preferential terms of a residential real estate object, on the same titles of real property or on the right of economic management or a similar industrial or commercial non-production real estate object.

Similar mechanisms for developing and proposing essential terms can be applied to other microeconomic (private) investment agreements. Public-private partnership mechanisms can be used not only when concluding and executing contracts for the construction of residential or industrial real estate for transfer to former military personnel or family members of deceased military personnel or other privileged categories of citizens. They can be used in the joint development and discussion of the essential terms of macroeconomic (public) investment agreements by economic entities, citizens, and a developing country that this country will offer to developed countries; as well as in the joint development by the above-mentioned entities of microeconomic (private) investment agreements of various types to be offered to domestic and foreign investors.

The proposal of a Ukrainian scholar[57] to legislate a deadline for concluding investment agreements within the framework of public-private partnerships after the results of the tender are published should be agreed with, as well as the need to supplement the new provisions of the Law of Ukraine "On public-private partnership" [58] with the rules on the responsibility of authorized persons in the implementation of all procedures necessary for the implementation

[55] Yevhen Komar, "Ways of Improvement and Current Situation of Legislative Regulation of Investment Contracts in Construction," *Scientific Bulletin of the International Humanities University* 10-2, no. 1 (2014): 196–99, https://www.vestnik-pravo.mgu.od.ua/archive/juspradenc10-2eng/part_1/56.pdf.
[56] Taras Rym, "Some Aspects of the Research of the Problems of Invalidation of Contracts Concluded in the Investment Sphere," *Law Herald* 3 (2020): 103–10, https://doi.org/10.32837/yuv.v0i3.1910.
[57] Marya Gurenko, "Guarantees of the Rights and Legitimate Interests of the Parties of the Investment Agreement with the Participation of Public Authorities and Local Governments," *Actual Problems of the State and Law* 89, (2021): 8–14, https://doi.org/10.32837/apdp.v0i89.3183.
[58] Verkhovna Rada of Ukraine, *Law of Ukraine No. 2404 "On Public-Private Partnerships"* (2010), https://zakon.rada.gov.ua/laws/show/2404-17#Text.

of a certain form of public-private partnership, which will contribute to more efficient work and prevention of corruption offenses, simplification and expediting of organizational work on drafting agreements, agreeing on essential terms and other components of the legal regime and finalizing certain investment agreements.

Cooperation within the framework of public-private partnerships may be more significant when concluding and implementing a special subgroup of microeconomic (private) investment agreements, such as innovation agreements aimed at further development of scientific and technological progress and introduction of the latest economic, ergonomic, environmental, etc. production and technologies. Matveev[59] believes that a group of such treaties is aimed at achieving a complex goal: "improving the business climate, creating favorable conditions for investment, ensuring accelerated economic growth of the state, building a modern, sustainable, open and globally competitive economy and, ultimately, improving the welfare of Ukrainian citizens", which coincides with the goal of cooperation within the framework of public-private partnership and ensures the achievement of public and private interests.

The government should provide state guarantees to protect investments from unlawful confiscation or nationalization, as well as support innovation to attract investors to enter into microeconomic (private) investment agreements. Merely offering model or standard investment agreements in various sectors of the economy and social sphere is not sufficient. Investors need confidence that both the state and all participants in investment activities have access to pre-trial and judicial mechanisms for protecting their rights. Both states and recipients of domestic and foreign investments share an equal interest in this. As noted above, the parties to public and private investment agreements are equal under both international and private law; at the same time, recipient states provide guarantees outside of contracts to protect the rights and interests of foreign investors. The principle of the non-retroactivity of laws, except for provisions that improve the rights of the affected parties, is recognized in both international law and the national law of most states.

Typically, recipient states of foreign investments are economically weaker than the investing states. To attract investment, the former must create preferential regulatory conditions for foreign investors. This may, however, conflict with Third World Approaches to International Law (TWAIL). However, strict conditions for foreign investment in general, or in comparison with the conditions offered by other states seeking investment, may direct investment flows to other countries. Therefore, each state, as a potential recipient of investment, must independently determine the appropriate level of strictness or leniency of domestic and/or foreign investment conditions. It is evident that Ukraine, as a potential recipient of investment, must decide in which sectors of the economy to maintain the national investment regime for foreign investors and in which sectors to offer preferential conditions. In any case, the state guarantees the stability of licensing conditions for the duration of the investment agreement.

The foregoing does not imply that a state must fully forgo the protection of its own interests in favour of foreign investors. This was confirmed in the dispute Philip Morris v.

[59] Petro Matveev, "Investment Contract as a Component of Innovative Activity at the Current Stage of Development of Ukraine," *Our Law* 10 (2014): 129–32, http://nbuv.gov.ua/UJRN/Nashp_2014_10_25.

Uruguay, the decision in which was rendered on 8 July 2016 after six years of proceedings before the ICSID. The tribunal ruled in favour of Uruguay and rejected the claims of the foreign investor, finding that Uruguay's actions did not violate the investment agreements and that the subject of the dispute was clearly unrelated to the terms of the agreement[60].

The parties to any microeconomic (private) investment agreement may encounter certain inconsistencies during its conclusion, execution, and termination. At the conclusion stage, these inconsistencies are usually resolved by the parties; otherwise, the agreement is not finalized. Ivanets[61] emphasizes that bureaucratic procedures complicate the process of concluding and registering investment agreements and criticizes the lack of online services for their registration and accounting. According to the researcher, investors do not always have access to complete and reliable information about investment risks and conditions, which presents an additional challenge. Other issues include the lack of incentives for developing collective investment institutions and the shortcomings in the state support system for investment.

It is not surprising that under the martial law regime in Ukraine, there is no effective support for investment activity. The potential uncertainty of investors in the pre-trial and judicial protection of their property rights is of greater concern. The aleatory (risky) nature of certain investment agreements is an additional factor in disputes. Kukharev[62] (2023) identifies the possibility of disputes between the contractor and the customer (investor) under the contract for the performance of the research work: "if in the course of the research work it is revealed that it is impossible to achieve the result due to circumstances beyond the contractor's control, the customer is obliged to pay for the work performed before the impossibility of obtaining the results stipulated by the contract was revealed, but not higher than the relevant part of the price of the work specified in the contract. Thus, if it is impossible to achieve a certain result, the contractor must prove it theoretically, experimentally, and immediately notify the customer."

In the case of inability to reach a compromise between the parties to the agreement in a pre-trial procedure, such disputes shall be considered by specialized commercial, economic, arbitration, etc. courts of the recipient countries. These courts should conduct proceedings in accordance with the law, fairly and impartially. The government and its potential recipients of domestic and foreign investments risk losing the opportunity to receive investments if investors' interests are violated unlawfully. Reputable investors often rely on long-term cooperation and predictable income.

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[60] International Centre for Settlement of Investment Disputes, *ICSID Case No. ARB/10/7 "Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay" ("Philip Morris v. Uruguay")* (2016), https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/10/7.

[61] Mykhaylo Ivanets, "Investment Contract as a Basis for Obtaining Housing: Theory and Practice Problems," *Uzhhorod National University Herald* 82, no. 1 (2024): 383–87, https://doi.org/10.24144/2307-3322.2024.82.1.61.

[62] Oleksandr Kukharev, "Contract for Performing Research Works as a Form of Consolidating the Rights and Obligations of Venture Investment Participants into Innovation Activity," *Juridical Scientific and Electronic Journal* 11 (2023): 170–73, https://doi.org/10.32782/2524-0374/2023-11/37.

Some researchers study the investment of large manufacturing and trading companies participating in foreign trade in supply chain capacities, provided that they are long-term and repeatable. Otherwise, suppliers will not be interested[63]. Investment agreements for investing in logistics, transport, and trade capacities can be concluded in conjunction with international sales contracts. These agreements often precede international sales contracts, laying the groundwork for them. Such contracts are concluded based on the United Nations[64] or an earlier version of Incoterms[65] and the provisions of the national legislation of the country of one of the parties to the contract or a third country.

Disputes arising between the parties to microeconomic (private) investment agreements may be considered by courts of various national or international jurisdictions with specialization in commercial, trade, economic, etc. disputes, or even direct specialization in investment disputes. Specialization is obviously a credible factor for potential parties to investment disputes. Kropova[66] notes that World Trade Organization (WTO) mechanisms are rarely used to resolve such disputes, as this organization uses an interstate remedy that is not always suitable for investment disputes. Institutional arbitration, which is the consideration of a dispute by a specialized institution, is more common. The most commonly used institutions for investment disputes are the International Center for Settlement of Investment Disputes (ICSID), the London Court of International Arbitration, the International Court of Arbitration, etc. Crawford[67] developed and proposed a new integrative approach designed to reconcile the interests of the parties to an investment dispute and reconcile the parties based on five principles of international procedural law.

European scholars have been raising the issue of improving the judicial review of disputes between investors and the state through the establishment of investment courts in order to strengthen the specialization and professionalism of courts and judges, in particular, over the past few years. An important issue is the observance of impartiality and the possibility of making fair decisions by judges who are appointed by the member states and therefore depend on the states that appoint them[68]. The same questions were raised in Ukraine regarding the need to establish the Higher Investment Court of Ukraine, financing its activities, appointment of judges, etc. The need to introduce the High Court for Investment Activity into the judicial system of Ukraine as a supreme specialized court (along with the High Anti-

[63] Andrew M. Davis and Stephen Leider, "Contracts and Capacity Investment in Supply Chains," *Manufacturing & Service Operations Management* 20, no. 3 (2018): 403–21, https://doi.org/10.1287/msom.2017.0654.

[64] United Nations, *United Nations Convention on Contracts for the International Sale of Goods (CISG)* (1991), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf.

[65] International Chamber of Commerce, *Incoterms* (2020), https://iscosafricashipping.org/wp-content/uploads/2020/02/ICC-INCOTERMS-2020.pdf.

[66] Anastasiya Kropova, "Investment Dispute Settlement Mechanism," *Law Review of Kyiv University of Law* 2–4 (2022): 69–72, https://doi.org/10.36695/2219-5521.2-4.2022.11.

[67] James Crawford, "Treaty and Contract in Investment Arbitration," *Arbitration International* 24, no. 3 (2008): 351–74, https://doi.org/10.1093/arbitration/24.3.351.

[68] Lisa Diependaele, Ferdi De Ville, and Sigrid Sterckx, "Assessing the Normative Legitimacy of Investment Arbitration: The EU's Investment Court System," *New Political Economy* 24, no. 1 (2017): 37–61, https://doi.org/10.1080/13563467.2017.1417362.

Corruption Court and the High Court of Intellectual Property) to consider disputes in the field of investment has been proved[69].

Tylchyk and Ovdiienko[70] propose to overcome the so-called "investment problem" in Ukraine's economy by strengthening the provision of services to the population and business by various state institutions such as administrative, judicial, legislative, etc., which can positively affect the strengthening of public-private partnerships in terms of attracting domestic and foreign investment. Efficient, rapid, professional and impartial activities of commercial courts, the International Commercial Arbitration Court at the Chamber of Commerce and Industry that currently resolve most investment disputes, as well as new judicial institutions that may be established later, will help to increase investors' trust in the state and their sense of protection from illegal actions of recipients, the state or other participants in investment relations.

The findings of Blikhar's[71] PhD research, which, in addition to the establishment of a specialized investment court, also proposed the establishment of a specialized investment state bank and the Investment and Innovation Agency of Ukraine, whose tasks, among others, should be: "synchronization of investment and innovation activities, promotion of foreign investment and implementation of innovations in Ukraine, in particular through the creation of a favorable investment climate in Ukraine, a positive image of our country, through systematic and comprehensive constructive influence in this area". The implementation of such proposals will be the subject of further research. The work on deepening international cooperation between the EU, which consists of more than 30 member states, and individual states continues and deepens in 2014. The EU started negotiations with Canada on the Comprehensive Economic and Trade Agreement with a chapter on investment issues. The EU plans to conclude similar agreements with Singapore and India. The EU has also received a mandate to negotiate such an agreement with Japan, and plans to conclude free trade agreements with the United States and China.

The draft text of the agreement with Canada and Singapore is basically similar to the North American Free Trade Agreement[72], as the work on the establishment of the Multilateral Investment Court with the participation of the EU, the US, and Canada is deepening[73]. After the establishment of this court, similar smaller courts (with jurisdiction limited to the territory

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[69] Bogdan Derevyanko, "On Formation and Activities of Specialized Investment Court of Ukraine," *Entrepreneurship, Economy and Law*, no. 3 (2020): 323–27, https://doi.org/10.32849/2663-5313/2020.3.54.

[70] Vyacheslav Tylchyk and Mariya Ovdiienko, "Administrative and Legal Support for the Formation of the 'Investment Climate' in Ukraine," *Scientific Bulletin of the International Humanities University* 29, no. 2 (2017): 74–77, http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?C21COM=2&I21DBN=UJRN&P21DBN=UJRN&IMAGE_FILE_DOWNLOAD=1&Image_file_name=PDF/Nvmgu_jur_2017_29(2)__20.pdf.

[71] Mariia Blikhar, *Legal Nature of Investment Relations: Financial and Legal Regulation* (Lviv: Lviv Polytechnic National University, 2018).

[72] U.S. Customs and Border Protection, *North American Free Trade Agreement* (2020), https://www.cbp.gov/trade/north-american-free-trade-agreement#:~:text=North%20American%20Free%20Trade%20Agreement%20(NAFTA)%20established%20a%20free%2D,produced%20by%20the%20signatory%20nations.

[73] Marc Bungenberg and August Reinisch, "Draft Statute of the Multilateral Investment Court," *Studies in International Investment Law* 37, no. 1 (2021): 41–80, https://doi.org/10.5771/9783748924739.

of a particular country) will be established in other countries, many of which will want to conclude an agreement with the EU and fall under the jurisdiction of this Multilateral Investment Court. The question remains whether investors from different countries will receive real justice and protection of their interests. Most likely, they will. Then they will feel more secure, and the process of investment activity within Europe and geographically close countries may be revived.

4. Conclusions

The study makes it possible to propose the legitimization of the term "investment treaty" in the legislation of individual states and interstate organizations and its division into two large groups: "macroeconomic (public) investment treaties" and "microeconomic (private) investment treaties". The purpose of any investment treaty is to achieve certain proportions of public and private interests. By analogy with the division of joint-stock companies into public and private ones, it is possible to propose to divide investment agreements into public and private ones: the criterion for division should be the composition of the parties to such agreements. Only states or their groups or associations may be parties to investment treaties of the first category.

Macroeconomic (public) investment treaties are concluded between states The legal regime and essential terms of the treaties are most often proposed by economically developed states and agreed upon by states whose economies have the status of developing. Businesses in such countries propose to their state to agree to the terms of the contract proposed by an economically developed state within the framework of public-private partnerships, and often offer to provide even more favorable conditions for foreign investors. The reason for this is the competition between enterprises, institutions, and organizations that are potential recipients of investments for the most lenient conditions for investing and withdrawing profits for foreign investors.

As a result of the signaling function of a business agreement, investment market participants quickly learn about the non-fulfillment or improper fulfillment of the terms of a microeconomic (private) investment agreement by a recipient business entity or non-compliance with guarantees of investor protection by the state of the recipient entity. In such cases, the future conclusion of investment agreements by the offending entity, entities from the offending entity's region, or entities from the offending entity's country is threatened. Restoration of business reputation is a long process, unlike its loss.

Microeconomic (private) investment agreement for the construction of residential or industrial real estate is one of the most common in practice, the purpose of which is to create and put on the balance sheet of a business entity, city, region, state or other legal entity a new real estate object. This agreement may become more widespread during the post-war reconstruction of the economy and social sector of Ukraine and other countries that will face the need to overcome the consequences of the war. The state and international or domestic organizations should more actively offer themselves as investors or participants in investment activities, which will be commissioned to build residential and commercial real estate that can be owned, used, disposed of on the basis of ownership, economic management, operational management or similar, or used on the basis of lease by certain beneficial categories of citizens, their associations or business entities.

The simplified procedure for entering into such microeconomic (private) investment agreements may be an incentive for all potential participants to conclude them through the offer of standard and model agreements. The draft of such a microeconomic (private) investment agreement for the construction of residential or industrial real estate should contain a clear definition of the subject matter, price, term, a list of obligations of the parties and possible risks of each party, methods of pre-trial dispute resolution through mediation, liability of the parties for non-fulfillment and improper fulfillment of obligations under the agreement, etc. As a result, the widespread use of a unified, standardized form of such an agreement will facilitate the rapid identification and elimination of gaps, as well as the clarification of its essential terms and their details.

The conclusion of other microeconomic (private) investment agreements will be facilitated by the state's proposal of model and standard forms of agreements. Moreover, close involvement of the state at the stage of preparation for the conclusion of contracts (development of essential terms of standard and model microeconomic (private) investment contracts, as well as their amendments and supplements should be carried out with the involvement of potential parties to these contracts, including foreign ones) and at the stage of their execution not as a controller, but as a partner and guarantor of compliance with the terms by the parties.

In addition to performing the social function of supporting businesses and citizens affected by the military aggression of the Russian Federation, it will be important for the state to participate in public-private partnerships in the joint development and discussion of the essential terms of macroeconomic (public) investment agreements with economic entities and citizens. These conditions will be proposed by the state whose economy is developing and needs investment to the states with developed economies to be enshrined in macroeconomic (public) investment agreements.

The interest of investors in entering into various microeconomic (private) investment agreements will be facilitated by the availability of state guarantees to protect investments from unfavorable changes in legislation and their confiscation, requisition, nationalization, etc., and the possibility of protecting their interests in professional national and international courts. Investment disputes between business entities and states are currently resolved in Ukraine's commercial courts and the International Commercial Arbitration at the Ukrainian Chamber of Commerce and Industry. The best option would be to create a specialized High Investment Court, whose judges would consider such disputes professionally, promptly, and impartially, and make fair decisions.

Further research requires consideration of the possibility of establishing new judicial and administrative bodies, new financial institutions that will facilitate investors' activities, and the search for opportunities to deepen cooperation between states, investors, recipient businesses, and chambers of commerce and industry, including public-private partnerships, to attract additional domestic and foreign investment. New regulatory and theoretical provisions should also be developed later, separately for macroeconomic (public) investment treaties and separately for microeconomic (private) investment treaties.

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