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LEGAL REGULATION AND THE ESSENCE OF STATE CREDIT

The article is dedicated to determination of the essence of one of the most important institutes of financial law, state credit. Providing carrying out the purpose of public financial activity (recovery by the state all financial costs) also maintains due to using this legal institution of financial law. Different approaches to the determination of the essence of the state credit, that means the ability of the state to provide extra-earnings to the budget, to cover its deficit, are analyzed. Relationships, concerning state credit, are characterized by inequality of sides, where one side is the state as the borrower and the other side is the population and business entities as creditors. They have a number of peculiar features, which give the opportunity to talk about the state credit as financial and legal institute.

The state credit is a complex of special economical relationships, in which the state acts as a debtor and the population and business entities act as creditors. State credit institute is a form of physical and juridical persons' participation in forming of state's money national fund. The money, got from the state credit, doesn't give new incomes, but it acts as temporary state's resource, that must be returned.

Wider concept of the state credit can be determined as an institute of financial law, which unites and regulates a homogeneous group of financial legal relations about mobilization of temporary free money of enterprises, banks, population's savings for national needs and is one of the forms of physical and juridical persons' participation in forming of state fund.

The main purposes of state credit are:

- solving of the problems of budget deficit;*
- realization of regional financial and credit policy, that is directed towards equalization of population's social and economical life conditions and functioning of regional economy;*
- support of local municipality while solving urgent social and economic tasks;*
- support of priority for the economy sectors and kinds of activity.*

Legal relations that develop in the area of the state credit are very different. Huge amount of subjects, which have specific authorities, takes place in them. The peculiarity of legal relations in the area of the state credit is the fact, that they have

state power character and the state, in spite of its debtor's position, sets the rules of subjects' behavior by itself.

Key words: *state finance, public finance activity, credit, the state credit, cost funds.*

Target setting. The state is organization of political power of any society, acts as a representative of the interests of the whole people and expresses its will. In order to manage the affairs of the entire society, the state uses a specific mechanism - the mechanism of state administration. The main means of ensuring activity of the state and at the same time its instrument are public finances.

The purpose of the article is to determine the role of public credit as a leading institution of Financial Law, its essence and significance for the functioning of the state and local self-government while conducting of public financial activities.

Public finances are a system of public relations related to the mobilization, distribution and use of centralized and decentralized funds to fulfill the tasks and functions of the state and local self-government. That is, public financial activity of the state is conditioned by the objective necessity and is the process of collecting, distributing, redistributing and using centralized and decentralized funds of cash that ensure practical fulfillment of state functions [1, p. 10].

The purpose of public financial activity of the state as a basic category of Financial Law is determined by financial needs of the state itself and is to cover the state of all financial expenses. As P.S. Patsurkivskyi correctly observes "this ultimate strategic goal of financial activity of the state can only be realized through the implementation of intermediate tactical goals of such activities" [2, p. 4]. Among the main goals the researcher identified: collecting cash by the state in its financial funds; distributing them according to the needs and state priorities; using of collected cash for the fulfillment of state tasks [2, p. 4].

The attraction of funds to the state budget is carried out with the help of methods of mobilizing financial resources. However, these funds for the state, as a rule, are not enough and providing uninterrupted financing of public needs, the state is resorting to attracting free financial resources of individuals and legal entities. It is these relations that are relations of state credit, where one side is

the state as a borrower, and the other - the population and economic entities as lenders. They have a number of distinctive features that make it possible to talk about public credit as a financial and legal institution [3, p. 123]:

- in the case of a state loan, the borrower is a state that attracts funds for their needs on the basis of reciprocity, and natural and legal entities that provide their own funds for temporary use, act as creditors of the state;

- borrowing state unilaterally establishes the terms of issue, the procedure for realization and repayment of the loan, etc.;

- states loan is not secured by a pledge, but is guaranteed by the financial resources of the state.

Thus, public credit is a set of special economic relations, in which the state acts as a debtor, and the population and economic entities are creditors.

As the peculiarity of Financial Law, as Yu. A. Rovinskyi noted, is the presence of two kinds of legal institutions in it: single and mixed (complex), then we can talk about the assignment of public credit to integrated institutions of Financial Law, because it is affected by such branches of Law as Constitutional, Administrative, Civil. The criterion for assigning a state loan to Financial Law is the function of mobilizing the state funds to meet state and social needs.

Determination of the place of state credit in the system of Financial Law is primarily due to the division of the branch of Law into general and special parts. General part of Financial Law includes the rules that establish the basic principles, legal forms and methods of public financial activity, the competence and legal status of its bodies, establish a single financial system and methods of financial control. Special part of Financial Law is the institutions that regulate certain types of homogeneous financial relations, which are interconnected as separate subgroups. The institution of state credit belongs to them.

The institute of state credit is a form of participation of individuals and legal entities in the formation of nation-wide fund of state money. In relations in the area of state credit creditors are physical and legal persons, and the debtor is the state. The object of the state loan is temporarily free funds of citizens and economic

entities, which are transformed into additional financial resources of the state. And although revenues from state loans are additional source of revenue for the state budget, it is impossible to talk about receiving state revenue. This is due, first of all, to the general principles of lending, which consist in the timeliness, repayment and payment, which gives rise to the obligation of the state to repay the debt within a specified time period and to pay interest on the use of the funds provided. That is, the money received from the state loan, does not give new profits, and acts as temporary resource of the state, which is should be returned.

As an economic category, public credit reflects some of the essential characteristics of credit relations, but it has some differences compared to a bank loan.

Firstly, with bank lending, borrowing is aimed at obtaining profits by banks. Repayment of loans is carried out at the expense of productive use of borrowed funds, and interest repayment - at the expense of additional profits from the pro-loan measure.

With a state loan, the purpose of borrowing funds from the state is to attract additional financial resources to cover the deficit, which is usually caused by high expenditures of the state budget. For the most part, this is an unproductive expenditure directed at social and public needs.

Secondly, the essential difference between state and bank loans is the principle of security of loans. For a bank loan, there is a whole system of material security (in the form of collateral, insurance, guarantees, etc.), and for state loans there is no direct provision (according to its obligations, the state meets all financial resources).

Thirdly, the need for enterprises and organizations in bank loans arises in connection with the uneven movement of value in production and exchange. The need for public credit arises because of the country's financial difficulties, that is, the imbalance between the movement of money in circulation and the commodity resources to cover them.

Fourthly, bank credit is related to the part of money circulation, where money serves as a means of payment. That is, with the help of a loan, the greater part of commodity payments are carried out. With state credit, money is used not only as a means of payment but also as a means of circulation.

Fifthly, a bank loan has a strictly targeted purpose. It is used for timely monetary circulation. State loans are generally used globally to finance capital expenditures and costs associated with solving social problems.

Sixthly, with a bank credit terms and conditions of repayment are strictly regulated by the terms of the loan agreement and for their violation of the borrower applied economic sanctions. With a state loan, they can be unilaterally changed by the state, and economic sanctions are not foreseen or applied to the borrower.

Seventhly, bank loans are mainly related to non-cash money circulation, since the attraction and provision of funds is carried out by transferring them from one account to another. State loans are more widely used in the field of cash circulation, which is an effective lever of public cash management in the country.

Eighthly, bank credit is a source of growth in the amount of cash in circulation, and public credit contributes to their reduction.

Actual scientific researches and issues analysis. The first scientific studies of public loans were carried out in the late nineteenth and early twentieth centuries by such well-known scientists as: A.A. Aleksieiev, A.A. Nikitinskyi, M. F. Orlov, I.S. Mordvinov. The concept of state policy in the field of state credit changed after the socialist revolution of 1917. Banking system of the country was nationalized, specialized financial bodies, which provided a massive subscription to state loans were created.

Studies of the institution of state credit in the Soviet era were almost non-existent. Only separate papers of YU. A. Rovinskyi, E. A. Voznesenskyi, L. K. Voronova, R. O. Khalfina showed a brief description of the state credit as a component of the financial system and the Institute of Financial Law. The complex study of this problem was first carried out in the 70's by S. D. Tsyppkin. In the paper "Legal regulation of state credit in the USSR" he formulated the concept of public credit; dwell on the peculiarities of the legal regulation of the funds attracted by the state; characterized the forms of state credit in the USSR [4]. Further research on the problems of state credit was made by M. M. Artemov., who focuses on the legal regulation of the savings case [5].

The treatment of the concept of "state credit" by different scholars is somewhat different. Thus, L.K. Voronova defines state credit as a form of financial legal relations, in which the state actively resorts to the mobilization of monetary and material assets from legal entities and individuals on the principles of voluntary, repayment, reimbursement and maturity [1, p. 283]. Russian scientist N.I. Khimicheva responds the view that public credit can be considered in different ways. In particular:

- as an economic category, a state loan is a system of financial relations that arise as a result of voluntary involvement of the state for the temporary use of free funds of legal entities and individuals;

- as public financial and economic relations, state credit is the relations between the state, on the one hand, and legal entities and individuals on the other hand, in which the state is the borrower of free funds of these entities;

- from a legal point of view, a state loan is regulated by legal norms relations on the accumulation of temporarily free funds of legal and physical funds to cover public debt, regulation of money circulation and investment [6, p. 342].

S.O. Bulhakova notes that state credit is a set of monetary relations that arise between the state, on the one hand, and individuals and legal entities, on the other hand, as regards, firstly, the attraction of temporarily free funds and their use on financing of public expenditures, and secondly, providing financial assistance to enterprises and organizations on terms of maturity, payment and return [7, p. 111].

Summarizing the above, one can come up with the following general definition: state credit is an institution of budgetary law, which unites and regulates a homogeneous group of financial legal relations concerning the mobilization of temporarily free funds of enterprises, banks, savings of the population for national needs and represents one of the forms of participation of physical and legal entities in the formation of a state fund.

The statement of basic materials. The main objectives of the state credit include:

- 1) solving the problems of budget deficit financing;

2) conducting of regional financial and credit policy aimed at population's social and economic conditions equalizing of and functioning of regional economy;

3) support of local self-government in solving urgent social and economic tasks;

4) support of priority for the economy sectors and activities.

In legal and economic literature, the conditionality of finance is determined by the existence of the state and, consequently, the state's influence on financial relations. The state provides the legal form of most relations, which are already being regulated by law, acquire the form of legal relations. Not all financial relations existing in a society are the object of financial activity of the state, but only that part of them, which is conditioned by the existence of the state itself [8, p. 11]. These financial relations are conditioned by the existence of the state and are manifested only in the forms determined by the state. That is, the state, taking into account social needs, provides certain forms of financial relations which objectively arise. It uses the right to establish specific types of payments, the procedure for their enrollment in public funds, determines the directions of use of financial resources, their distribution and use.

Financial relations in the field of a state loan arise in the process of public financial activities related to the formation, functioning and repayment of public domestic debt. The object of these legal relationships is the financial resources of the state.

In the legal relationship of state credit, as in other financial relations, one of the parties always advocates the state or an authority authorized by it. Another aspect of the relationship can be any subjects of financial relations. Determination of a particular participant in the legal relationship of the state credit depends on the type of legal facts that underlie their origin. Thus, the subjects of legal relations on the state internal debt of Ukraine are, on the one hand, the state represented by the Government as the recipient of funds, which is obliged to repay and pay interest on it; on the other - legal and natural persons (lenders).

Financial and legal relations, that contain credit relationship, always reflect certain economic relations that exist in this state.

The most important feature of financial legal relations is that they are a legal form of expression and consolidation of financial relations, which in themselves are a form of certain economic relations. Since financial relations relate to the distribution of the national income of the country, as well as the fulfillment of the tasks and functions of the state, where the state acts not only as a carrier of power, but as an economic entity, it organizes these relations, provides them with the appropriate legal form and uses the interests of society.

Participation of representative and executive authorities of various levels, as well as financial and credit institutions in the legal relations in the field of state credit, is legally enshrined. For example, the Law of Ukraine "On Securities and the Stock Market" defined the conditions and procedure for the issuance and circulation of securities, including public ones. In this legal act, the interpretation of the category "securities", the types of securities disclosed and the notion of securities issuer, the main characteristics of shares, bonds of domestic state and local loans, treasury obligations of the state, savings certificates and promissory notes are given. Decisions on the issue of bonds of domestic state and local loans are made in accordance with the Cabinet of Ministers of Ukraine and local self-government bodies.

The legal principles of state regulation of the securities market and state control over the issuance and circulation of securities and their derivatives in Ukraine are also determined by the Law of Ukraine "On State Regulation of the Securities Market in Ukraine". In particular, Article 1 of this law states that "state regulation of the securities market is the state's implementation of comprehensive measures to streamline, control, oversee the securities market and their derivatives, and prevent abuse and abuse in this area" [9].

In accordance with the law, state regulation of the securities market is carried out in order to:

- implementation of a single state policy in the field of issue and circulation of securities and their derivatives;
- creation of conditions for effective mobilization and placement of financial resources by the participants of the securities market taking into account the interests of society;

- receipt of securities market participants information on conditions of issuance and circulation of securities, results of financial and economic activity of issuers, volume and nature of transactions with securities and other information that affects the formation of prices in the securities market;

- ensuring equal opportunities for the issuers, investors and intermediaries to access the securities market;

- guarantee of ownership of securities;

- protection of the rights of stock market participants;

- integration into European and world stock markets;

- observance by the participants of the securities market of the requirements of legislative acts;

- prevention of monopolization and creation of conditions for the development of fair competition in the securities market;

- control over the transparency and openness of the securities market.

State regulation of the securities market in accordance with the law is carried out in the following forms:

- adoption of legislative acts on issues of securities market participants;

- regulation of issuance and circulation of securities, rights and obligations of securities market participants;

- issuance of special permits (licenses) for carrying out professional activity on the securities market and ensuring control over such activity;

- prohibition and suspension for a certain period (up to one year) of professional activity in the securities market in the absence of a special permit (license) for this activity and bringing to responsibility for such activity in accordance with the current legislation;

- registration of securities issuance (emission) and information on issue (issue) of securities;

- control over the compliance of issuers with the procedure for registration of securities issue and information on securities issue, terms of sale (placement) of securities provided by such information;

- creation of a system for protecting the rights of investors and controlling the observance of these rights by securities issuers and persons engaged in professional activities in the securities market;

- control over the reliability of information provided by issuers and persons performing professional activity in the securities market to the controlling bodies;
- establishment of rules and standards for conducting transactions in the securities market and monitoring their compliance;
- prudential supervision of professional stock market participants within the scope of activities carried out by such a participant on the basis of a license issued by the National Commission for Securities and Stock Market;
- control over pricing systems in the securities market;
- control over the activities of persons serving the issue and circulation of securities;
- other measures on state regulation of control over issuance and circulation of securities [9].

The legislation of Ukraine establishes the division of competences between representative and executive bodies in the field of state credit. Representative body - the Verkhovna Rada of Ukraine has the following powers: to define a policy on public internal debt; to establish the maximum amount of the state domestic debt in approving the budget for the next fiscal year, its structure, sources and maturities; to maintain control over the state of domestic debt. The Government of Ukraine manages the state domestic debt of Ukraine; it must determine the order, terms of issue and placement of debt obligations of Ukraine, and annual publication of information on the state of domestic debt for the previous fiscal year.

The Law of Ukraine "On State Guarantees for the Restoration of Savings of Citizens of Ukraine" establishes the obligations of the state to the citizens of Ukraine who lost their money savings due to depreciation, located in the institutions of the USSR Savings Bank and the State Insurance of the USSR, which acted on the territory of Ukraine, as well as in government securities: bonds of the State targeted non-interest bearing loan of 1990, bonds of the State internal winning loan of 1982, state treasury bonds of the USSR, certificates of the Savings Bank of the USSR. Thus, the state undertakes to ensure the preservation and restoration of the real value of the savings of citizens and guarantees them compensation in the prescribed manner [10].

As we see, the role of the state is to ensure that the legal forms are consistent with economic relations, in time to update and change the legislation. Subjects of relations in addition to the Government of Ukraine are the relevant bodies of local self-government. These bodies are empowered to determine their own debt obligations and conditions for their issue.

The National Bank together with the Cabinet of Ministers of Ukraine offers proposals on state credit to the Verkhovna Rada of Ukraine to determine the policy in this area. National Bank of Ukraine "makes operations for servicing public debt related to placement, repayment and payment of government securities" [11]. In addition, the NBU buys and sells securities issued by the state.

Servicing of the state domestic debt of Ukraine is carried out by the Ministry of Finance of Ukraine through the banking system of Ukraine by conducting operations for the placement of bonds of domestic state loans and other securities, their repayment and payment of income in the form of interest and in other form.

Economic relationships between the creditor and the borrower arise when receiving a loan, using it and returning it. Depending on the type of credit relationship, the basis for their occurrence may be a unilateral act of the state, which is a feature of financial law. Consequently, the state as the subject of legal relations in the field of state credit, as the borrower and issuer of state-owned bonds in the relevant legal act, officially declares: its need for borrowed funds; the terms for which he needs these funds; the amount of remuneration he agrees to pay for the loan money provided; in many cases, about the goals for which he needs such funds; readiness to return the debt in the future and everything else.

Such conditions are a confirmation of the theoretical provisions, which determine that the material content of financial legal relations is the behavior of entities, and legal - the subjective rights and legal obligations, established by financial and legal rules. Thus, the acquisition of bonds establishes certain rights and obligations for both the issuer and the holder of bonds. In general, such relationships of rights and responsibilities are typical of the debt relationships existing between lenders and debtors.

The list of rights of the issuer, for example, includes: the right to receive borrowed funds in the form of paying the value of bonds; the right to dispose of borrowed funds at its own discretion to achieve this goal; the right to use these funds within a specified period, etc.

The main duties of the issuer are the following: the obligation to return the borrowed amount of funds to the bondholder and pay the promised remuneration for the use of borrowed funds; the obligation to repay the debt within the established time limits, if the bonds are urgent, etc.

As for the creditor-holder of the bond, he has the right to return the full amount of money that he has given to the issuer; the right to receive the remittance promised by the issuer for the use of borrowed funds; the right to demand timely repayment of arrears; ownership of securities. This means that he may own and dispose of his bonds without any limitations, if only these are not set by the conditions of output. That is, he can freely sell them, exchange, give, use as a means of payment or to secure an obligation.

On the other hand, the bondholder is obligated: to pay in full the value of the bonds, that is, to borrow funds at the disposal of the issuer for a specified term, refrain from the requirements of early repayment of the debt; to provide loan funds undoubtedly, without putting forward any conditions, and so on.

Thus, the role, significance and influence of Civil Law on relations in the field of state credit become evident. However, civil and legal norms do not affect their essence and are only supportive concerning ongoing relationships, and the initiative of their occurrence or termination will always be derived from the state. The rules of Financial Law provides for the organization of credit planning and relations that arise in all financial transactions. Relations that arise during the issuance and sale of government loans are governed by Financial Law, and all conditions are determined unilaterally by the borrower (state) in the relevant regulatory legal acts. Consequently, despite the complexity of the relations that arise in the field of public domestic credit, it can be noted that they are governed by the norms of the Financial, Administrative, and Civil Law sectors. Priority in their regulation belongs to the rules of Financial Law.

All relations in the field of state credit are state-owned. Despite of the fact that the state acts as a debtor (borrower) in these relations, it has the right to unilaterally establish their terms: term, payment, types, grounds for termination and change.

Legal entities and individuals that have voluntarily entered into relations in the field of state credit, are obliged to fulfill all loan conditions. Unlike legal relationship on bank loans, the subjects here are unequal, since the main method of regulating the relationship of state credit is a method of state-power influence and the state owns the function of management of public internal debt. The action of legal relations in time in the field of state credit is established by the state (the debtor).

However, in the field of state credit legal relationships appear not only with regard to debt obligations (between the borrower - the state and the creditors - legal entities and individuals), but also there are legal relationships that are mediated by the functioning of public debt. Such relationships, for example, are relations:

- between the Cabinet of Ministers of Ukraine and National Bank of Ukraine for receiving and repaying loans;

- between the Verkhovna Rada of Ukraine, the Government of Ukraine and NBU regarding the transfer of funds from the State Budget of Ukraine to compensate for the costs of placing, refinancing, paying out income and repayment of debt obligations;

- between the institutions of the Savings Bank of Ukraine and the National Bank of Ukraine regarding the establishment of the minimum size of mandatory reserves deposited (deposited) with the NBU and used as credit resources for repayment of government loans;

- between the institutions of the Savings Bank of Ukraine and the NBU regarding the payment of interest on deposits, which are the main source of credit resources for granting loans to the Government of Ukraine;

- between the Ministry of Finance of Ukraine and the NBU regarding the development of conditions for the management of Ukraine's internal indebtedness, etc.

Conclusions. Thus, legal relations in the field of state credit are very diverse. They involve a large number of subjects with specific powers. The peculiarity of legal relations in the field of state credit is

that they are state-owned by their nature, and the state, despite on its position as a debtor, establishes the rules of subjects' behavior by itself.

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ПРАВОВЕ РЕГУЛЮВАННЯ ТА СУТНІСТЬ ДЕРЖАВНОГО КРЕДИТУ

Стаття присвячена визначенню сутності одного з найважливіших інститутів фінансового права – державного кредиту. Забезпечення виконання мети публічної фінансової діяльності (покриття державою всіх фінансових витрат) здійснюється також завдяки використанню цього правового інституту фінансового права. Проаналізовано різні підходи до визначення сутності державного кредиту, яка полягає у можливості держави забезпечити додаткові надходження до бюджету, покрити його дефіцит.

Ключові слова: державні фінанси, публічна фінансова діяльність, кредит, державний кредит, фонди коштів.

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ПРАВОВОЕ РЕГУЛИРОВАНИЕ И СУЩНОСТЬ ГОСУДАРСТВЕННОГО КРЕДИТА

Статья посвящена определению сущности одного из самых важных институтов финансового права – государственного кредита. Обеспечение исполнения цели публичной финансовой деятельности (покрытие государством всех финансовых расходов) осуществляется также благодаря использованию этого правового института финансового права. Проанализировано различные подходы к определению сущности государственного кредита, которая состоит в возможности государства обеспечить дополнительные доходы в бюджет, покрыть его дефицит.

Ключевые слова: государственные финансы, публичная финансовая деятельность, кредит, государственный кредит, фонды денежных средств.