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**Public-private partnership and other legal forms of cooperation between business, the state (territorial communities) and blood service institutions in the field of blood and its components donation**

Based on the analysis of the current legislation of Ukraine on state cooperation (territorial communities’ cooperation), state agencies (municipal) economic sectors and private business, three possible forms of such cooperation have been identified. Every form has its own algorithm of the establishment. The following criteria for the division of forms were used: the legal basis for the application (legal act providing for a specific form of cooperation), types, parties, content, and procedure for entering into agreements regulating the conditions of such cooperation.

The first possible form (algorithm) of cooperation is public-private partnership (hereinafter: PPP), which is governed by the Law of Ukraine “On public-private partnership”. It is a joint business that is based on the provision by a state party (state, territorial community) to a private party (private legal entities and individual entrepreneurs) rights to manage (use, operate) the object of partnership or purchase, development (building, renovation, modernization) of the object of partnership with subsequent management (use, operation), provided that the private investor commits and fulfills its investment obligations. The features of a PPP are the following: it is a long-term agreement (up to 50 years), the possibility to regulate PPP by different agreements (concession, joint activities, management), and the possibility of including elements of different agreements to the agreement (mixed agreement). A PPP agreement shall ensure higher efficiency of activities compared to the situation when a state partner performs such activities without involving a private partner, as well as equitable distribution of the risks associated with the performance of PPP agreements among partners. A distinctive feature of a PPP is the possibility of a private partner to receive state support, namely, obtain state guarantees or guarantees of local government, funding from state or local budgets, as well as from other sources (national or local programs); payment of other transactions stipulated by the agreement to the private partner, in particular, payments for the readiness (availability) of the PPP object for exploitation (use); the purchase by the state partner of a certain amount of goods (works, services) that are produced (performed, provided) by a private partner under the PPP agreement; supply goods (works, services) to a private partner necessary for the implementation of PPP and, as well as in other forms provided by law.

The procedure for concluding PPP agreements also has certain characteristics, which are determined by two factors, namely, the need to verify that the agreement offered by a private partner ensures higher efficiency of the activity than in the case of carrying out such activities by a public partner without the involvement of a private partner (verified through an analysis of the effectiveness of the PPP) and determination of the private partner on a competitive basis.

The second form (algorithm 2) is the cooperation on the basis of agreements, type, content, and procedure for the conclusion of which are governed by special laws (Laws of Ukraine “On Concessions”, “On the lease of state and communal property”, “On the features of the transfer of the lease or concession of objects in the areas of heat supply, water supply and sanitation, which are in communal ownership”, “On concessions for the construction and operation of highways”).

In this case, as in Algorithm 1, the government or local authorities enter into an agreement with private business. The rights and obligations of the parties to the cooperation depend on the type of agreement (lease agreements or concessions). Such agreements shall be concluded on a competitive basis. The third form (algorithm 3) is defined by agreementual interaction of private business not with state or local government bodies, as in algorithms 1 and 2, but with agencies of the state and municipal sectors of the economy. The possibility of this form of cooperation is provided by the procedure for entering into joint activity agreements, commission agreements, assignments and property management agreements by state enterprises, organizations as well as legal entities, where the state shares in the authorized capital exceed 50 percent, approved by Resolution of the Cabinet of Ministers of Ukraine No 296 as of April 11, 2012. Algorithm 3 is characterized by the following features: a) only agreements not regulated at the level of a special law can take place in such a way, namely, agreements on joint activities, commissions, guarantee and property management; b) the term of agreements is not determined by the legislation; c) the initiator of the agreement is a private legal entity or a private entrepreneur that has expressed an intention to enter into a agreement; they also determine the terms and type of the agreement; d) it shall be agreed with the Cabinet of Ministers of Ukraine. The relevant draft decision is being prepared by the management body, with the approval of the Ministry of Economic Development, the Ministry of Finance, the State Property Fund and the Ministry of Justice. It shall contain the essential terms of the agreement, the conclusion of which is proposed to be agreed; e) no tender for the selection of a partner is conducted.

The application of the above-mentioned algorithms of attracting an investor into the sphere of blood and its components donation has certain features, which are determined by the following. The entire production process associated with blood and its components donation consists of the following steps: taking, processing, storing donor blood and its components, sale and further medicine production. According to the Law of Ukraine "On donation of blood and its components”, the first step of the production process, that is, taking blood, is provided exclusively by the agencies of the state and communal sectors of the economy, subjects of non-profit economic activity, namely, specialized institutions and organizations of blood transfusion and relevant units of health care institutions, which are controlled by the Ministry of Health of Ukraine, other state bodies and an executive body of the Autonomous Republic of Crimea in the sphere of health protection, regional, Kiev, Sevastopol city state administrations. Such institutions only operate in the legal form of either budget institutions or non-profit municipal enterprises, in which healthcare budget institutions have been converted as a result of medical reform.

At the next steps of the production process (processing and storage of donor blood and its components, sale of medicine made therefrom) producers of the first group (subjects of the state (communal) sectors of the economy), as well as subjects of commercial activity of other forms of ownership may act.

Considering such legislative approach, when developing investment models, it should be noted, that the institution of blood services: the state (communal) sectors of the economy is responsible for the beginning of the production process in the field of blood donation, and this subject cannot be terminated as a result of investment realization.

Algorithm 1. In the case of PPP, a party to the agreement on the side of the state partner can only be a public authority or municipal government. Public (municipal) institutions of blood services cannot conclude such agreements. However, in accordance with the Law on PPP, by the decision of a state partner, a state (communal) enterprise, an enterprise of the Autonomous Republic of Crimea or a commercial entity, 100 percent of the authorized capital of which belongs to the state, territorial community or the Autonomous Republic of Crimea, may be a party to the agreement under the PPP representing the corresponding state partner. The state partner bears a subsidiary responsibility for the obligations of such enterprise or commercial entity in accordance with an agreement entered into within the framework of the PPP. Thus, the Law on PPP provides only to enterprises the opportunity to participate in the PPP agreement on the side of the state partner. Accordingly, blood institutions that have not yet been transformed into non-profit enterprises do not have such an opportunity. Undoubtedly, a PPP agreement may be entered into with an investor solely as a public partner. However, for the purpose of operational influence on the implementation of the PPP agreement, direct communication with the investor on the implementation of investments, it is advisable for the blood institutions to participate in the agreement on the side of the state partner. The processes of autonomy shall be accelerated if the territorial community plans to apply PPPs to attract investors in the field of blood and its components donation.

Algorithm 2. When leasing (concession), landlords (concessionaires) act as state authorities and community bodies. However, for these agencies, there are certain reservations.

In the field of donation of blood and its components, it is inappropriate to transfer into a lease (concession) integral property complexes of enterprises of the state (communal) sectors of the economy, because in this case, enterprises shall be terminated by way of accession or liquidation. That is, the subject ceases to exist, thus the first step that is, taking blood, of the production process in this area is impossible. Institutions of blood services, which are entities of the state (communal) sectors of the economy, may be landlords of real estate with a total area of up to 200 square meters. Production-sharing agreements are not possible option for attracting investments in the field of blood and its components donation, because the subject of such an agreement is the relationship of the state of Ukraine with the investor on the search, exploration and extraction of minerals in a specific area of the subsoil and the management of works related to the agreement.

Algorithm 3. This option of engaging an investor grants the right to enter into agreements to autonomous institutions for blood services (non-profit state and municipal enterprises) as well as to institutions that remain in the form of a budget institution. They can be parties to joint activity agreements, commission, guarantee and property management agreements with private investors. However, it should be noted that the procedure discussed above approved by the Cabinet of Ministers of Ukraine applies only to the agencies of the public sector of the economy. In order that the mechanism established therein could be applied to blood service institutions: communal institutions, enterprises, the relevant territorial community shall adopt local legal act on these issues.

To summarize, it should be emphasized that current Ukrainian legislation offers different legal options (algorithms) for attracting private investors by state authorities (local governments) and institutions of blood services in the sphere of blood and its components donation. It is important to know the specifics of these legal forms, to actively use them to increase investment to this area in order to revive it and bring it into line with international standards.