

**CONSEQUENCES OF INVALIDITY OF A CONCESSION AGREEMENT  
FOR IMPLEMENTATION OF INFRASTRUCTURE PROJECTS**

*Annotation. Developing infrastructure through private financing via concession agreements is closely associated with various risks, including the possibility of such agreements being declared invalid. The paper provides a detailed analysis of the consequences of this outcome for project implementation and proposes solutions of mitigate potential risks. The study is based on an examination of judicial practice, regulatory legal acts, and an analysis of relevant research in this field. The results demonstrate that the invalidation of a concession agreement leads to significant losses, delays on project timelines, and legal uncertainty.*

*Keywords. Concession agreement, public-private partnership, invalidity of a transaction, financial risks, concessionaire, concedent.*

The concession agreement is a key instrument of public-private partnership, which helps attract private financing for the development of various projects, ranging from transport to social and other types of infrastructure. However, if such an agreement is declared invalid, serious consequences may arise in the form of damage to the implementation of the project itself. The project cycle is disrupted, which entails a complex of financial, time, and legal problems. The procedure for the occurrence of invalidity may be different, both on the general grounds provided for by the Civil Code of the Russian Federation, namely, fraud, pretense, commission under the influence of deception or violence, and as a result of violations of special requirements of Federal Law №115 dated 21.01.2005 “About

consensual agreements”<sup>1</sup>, for example, non-compliance with competitive procedures or non-compliance of the object with the approved list.

Financial losses entail unpleasant consequences for both parties to the agreement: the concessionaire is forced to repay the payments received from the concessionaire, as well as to resort to compensation for work already performed and incur additional costs for finding a new investor or investing in the project independently, significantly increases the burden on the budget, the difficulty of completing key tasks on time, and may also reduce investment attractiveness. The concessionaire and launch, loses the opportunity to profit from the operation of the facility and is forced to spend money on litigation. However, the postponement of time and delays in the implementation of project plans cannot be avoided: construction and installation work are interrupted, and holding a new competition takes a considerable amount of time, on average, from several months to a year or more, which leads to a “freeze” of the initiative if investors cannot be found on time.

Legal uncertainty is another extremely aggravating factor in the situation, as there are disputes about the status of finished works and ownership of a finished or reconstructed facility, disagreement over the allocation of costs, as well as the risk of challenging transactions concluded within the framework of the project. The impact also affects third parties: lenders face the threat of non-repayment of loans and depreciation of securities issued for the project, contractors and suppliers face non-fulfillment of contractual obligations and loss of funds, and consumers face a shift in the use of services for which this infrastructure and the project are intended wholes were created.

Separately, we can also single out an important risk that has almost irreparable consequences, which is reputational risk: reducing trust in a partner to a minimum on the part of investors and creditors entails minimizing the attraction of third-party financing for the project, which, in turn, complicates and slows down

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<sup>1</sup> Federal Law "About concession agreements" dated 21.07.2005 N 115-FZ (latest edition)// Official Internet portal of legal information [Electronic resource]. URL: <https://www.garant.ru/products/ipo/prime/doc/412007096/>

operational processes: disruption of schedules, violation of deadlines, logistics chains. In addition to the mentioned consequences. It is possible to identify the risk of negative media coverage of the situation, which will also negatively affect the concessionaire and the project itself.

In order to minimize the consequences of the invalidity of the concession agreement, it is very important to provide a set of preventive measures in advance in the documents and to clearly spell out and work out its terms. Firstly, it is necessary to correctly prescribe dispute resolution mechanisms, including the pre-trial settlement procedure, the choice of an arbitration court, as well as the term of dispute resolution and decision-making rules. Secondly, it is necessary to specify in detail the guarantees of return on investment: the terms of reimbursement of the concessionaire's costs in case of early termination of the agreement, the procedure for calculating compensation, considering the actual work performed and expenses incurred, as well as mechanisms to project against investment depreciation. It is equally important to clearly and, in a detail, regulate the conditions of the transfer of the object: the stages of acceptance of the completed works, the list of documents required during the transfer, the criteria for compliance of the object with various parameters – technical, operational requirements, the order of work to transfer ownership and use of an object.

The very distribution of risks between the parties should be as transparent as possible, it is very important to immediately specify all the contentious points in the contract to avoid complex and protracted litigation if one party does not like the work of the other party. Of course, it is also always necessary to carefully check the compliance of documentation with legal requirements. In particular, this concerns of documentation with competitive procedures and compliance of the content with the norms of the Civil Code of the Russian Federation, as well as other federal laws.

It will also be useful to invite independent experts at the stages of designing and preparing the agreement. This procedure helps the parties to look at the project

from the outside, identify weaknesses and strengths, assess the realism of deadlines, the planned budget and check the technical side of the project.

Also, if there is a financial opportunity, it is useful and advisable to provide for the creation of a reserve fund to cover unforeseen expenses, insurance of key risks, mechanisms for adjusting the terms of the agreement in case of changes in external factors (legislation, exchange rates, prices for materials).

Thus, from the conducted research, it can be concluded that the invalidity of the concession agreement not only disrupts the deadlines for the implementation of a specific project, but also creates long-term negative consequences for both parties to the agreement: reduces investment attractiveness, complicates the implementation of future infrastructure initiatives, undermines trust between the state and society, business. Minimizing such risks requires a comprehensive approach on both sides, from careful verification of the terms of the agreement itself and compliance with procedures to improving and using the regulatory framework competently and implementing mechanisms to protect the interests of participants, starting with the parties to the agreement and ending with third parties.

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