

## **The State as a shareholder**

The problem of the state's effective activity as a shareholder, i.e. state's corporate participation in entrepreneurial sphere, in the first place, is related to determining those fields of goods and services production where such participation is necessary. The criteria of defining corresponding directions of state entrepreneurial activity should be estimated not on the principles of entrepreneurship, but taking into account the essence and institutional goals of state ownership.

State ownership is a constituent element of the state regulatory system as a whole, but not solely capital called to bring about added value. The main objective for existence and functioning of state ownership, and accordingly, of state entrepreneurship is to resolve macroeconomic problems and secure proper conditions for reproduction of public capital.

It is quite clear that these criteria refer to the level, which is higher than microeconomic profitability indicators of separate enterprises. These criteria require that functioning of state ownership be estimated from the point of view of effectiveness of social production as a whole. This is the main element, which differentiates the objective of the state entrepreneurial activity from private.

Therefore, one can state that the main criterion of effectiveness for activities of the state as a shareholder is the evaluation of success in achieving macroeconomic objectives, which correspond to the essentials of the state policy. It is necessary to admit that the possible low effectiveness or even ineffectiveness of functioning of the state ownership, including corporate ownership, is acceptable, moreover, if it serves as a 'built-in stabilizer' of social reproduction.

Nevertheless, estimating this contradiction between low effectiveness of state ownership on the macrolevel and macroeconomic necessity for its functioning in entrepreneurial sphere, one cannot but search for new models and organizational forms of state entrepreneurial activity, which, securing the solution of macroeconomic tasks, would assist in increasing the effectiveness on the level of separate enterprises. But the main task is still to effectively regulated macroeconomic proportions and maintain favorable conditions for social reproduction.

Consequently, the most acceptable directions for functioning of state ownership are those, which arise from regulatory function of the state, namely:

- filling economic niches with unfavorable manufacturing environment, which are slow to attract private capital but still require development for purposes of national economy as a whole;
- restructuring separate enterprises or even sectors of economy, which proved to be temporarily or chronically unprofitable;
- regulating social consequences of cyclic nature of production in order to overcome the unemployment;
- securing the realization of active regional policy aimed at leveling considerable disproportion in economic development of different regions;
- encouraging the development of knowledge-intensive, progressive fields of production which require considerable preliminary investments and do not guarantee fast return on investment;
- increasing the number and quality of the so called “social” goods that is economic, social and administrative infrastructure of society as a whole;
- creating and securing enterprises’ operations in strategically important areas;
- participating in environment protection activities, establishing ecological balance, improving recovery technologies.

According to the Decree of the President of Ukraine dated 15 December 1999 # 1573 “On Changes in the Structure of Central Governmental Executive Authorities” the functions of liquidated National Agency for Management of State Corporate Rights are brought back to the State Property Fund of Ukraine. The basic tasks of the Fund on exercising shareholder rights on behalf of the state are:

- management of the state-owned shares (stakes) in the property of business companies;
- maintaining the register of state corporate rights;
- appointment of authorized persons to manage the state-owned shares (stakes) in business companies (hereinafter – authorized persons) and supervise the effectiveness of their work;
- replenishment of revenues to the budget through management of state corporate rights and Fund’s operations at the stock market;
- participation in determining the investment policies of enterprises in which the state retains a share in the charter capital;
- appointment of authorized persons to manage state corporate rights and conclusion of agreements with them to carry out such management functions.

As of September 1<sup>st</sup>, 2000, the number of open JSCs (municipal enterprises excluded) in which the state holds a stake in charter capital totals 2 543 companies. They are as follows:

- 419 companies with state-owned share exceeding 50 %;
- 1 225 companies (stake ranging from 25% to 50%);
- 899 companies with state-owned share less than 25 % of shares.

It is worth noting, that the Fund operates within the legislative field created in accordance with the Constitution of Ukraine, the law on enterprises in Ukraine, the law on entrepreneurship, Privatization Program and other laws, which specify the scope and essence of corporate rights.

In order to improve the system for management of state corporate rights the Fund has worked out and approved 11 regulations and methodological acts:

1. Resolution of the Cabinet of Ministers of Ukraine dated 15.05.2000 # 791 “On management of state corporate rights.”
2. “Regulation on the committee for selecting authorized persons to exercise management functions”, Order of the SPFU dated 18.05.2000 # 1014, registered in the Ministry of Justice as of 05.06.2000 # 328/4549.
3. “Regulation on the representative of the authority empowered to manage corresponding state corporate rights in management bodies of business companies”, approved by the Order of the SPFU dated 24.05.2000., # 1065 and registered in the Ministry of Justice as of 02.06.2000, # 325/4546.
4. “Regulation on work proceedings and jurisdiction of permanent commission for financial and economic analysis of business operations”, approved by the Order of the SPFU dated 10.04.2000, # 745 and registered in the Ministry of Justice as of 09.06.2000, # 342/4563.
5. “Regulation on work proceedings of the permanent committee for filling vacancies for position of the CEO of open JSCs” approved by the Order of the SPFU dated 06.04.2000, # 711 and registered in the Ministry of Justice as of 16.05.2000, # 281/4502.
6. “Regulation on the procedure for conclusion and re-conclusion of a contract with the CEO of open JSC, holding company and state joint stock company” approved by the Order of the SPFU dated 06.04.2000, # 695 and registered in the Ministry of Justice as of 16.05.2000, # 279/4500.

7. “Model form of General agreement for delegating to executive authorities the functions on management of state corporate rights”, approved by the Order of the SPFU dated 25.05.2000, # 1647 and registered in the Ministry of Justice as of 02.06.2000, # 324/4545.
8. “Model agreement with the authorized person on the performance of functions related to management of state corporate rights”, approved by the Order of the SPFU dated 07.08.2000, # 1647 and registered in the Ministry of Justice as of 06.09.2000, # 579/4800.
9. “Methodology for analyzing operations of open JSCs with state-owned share in charter capital”, approved by the Order of the SPFU dated 31.08.2000, # 1809.
10. Instruction “On the procedure for compiling reports by a representative authorized to manage state corporate rights”, approved by the Order of the SPFU dated 29.05.2000, # 1109.
11. “Model contract with the CEO of open JSC”, approved by the Order of the SPFU dated 06.04.2000, # 695 and registered in the Ministry of Justice as of 16.05.2000, # 280/4501.

Within its jurisdiction the Fund undertakes measures on timely transfer of dividends in order to control the effectiveness of state corporate rights’ management, monitors financial and business indicators of operations of JSCs, which are managed by central or local executive authorities.

By the special instruction issued by the Cabinet of Ministers of Ukraine dated 24.01.2000, # 1096/96 the Fund was charged to secure, no later than 01.05.2000, the holding of general shareholders’ meetings of open JSCs in which the state retains a share in charter capital. At these meetings the Fund is expected to assist in adoption of the decision on allocation of dividends amounting at least 50% of net profit and determining the term for payment of dividends by 01.06.2000.

In order to fulfil the above instruction the Fund mandated state representatives to vote for allocating at least 50% of profit to the dividends’ fund.

As of 01.09.2000, the Fund has already held general shareholders’ meetings at 1645 joint stock companies. Furthermore, 787 JSCs were recognized as such, where holding the meetings would be inadvisable. These are 148 JSCs fully owned by the state where the distribution of profit was approved by the SPFU; 200 enterprises, which are under bankruptcy proceedings, 55 newly established JSCs and 384 companies, in which state holds less than 10% of shares.

With the aim of selecting and analyzing financial and statistic accounts of JSCs with state-owned share, the electronic finance and statistic accounts database has been created and implemented.

In accordance with the SPFU Order dated 25.04.2000, # 877 the regional offices were empowered to collect and analyze financial and statistic statements of JSCs managed by the regional offices.

According to the data provided by the State Statistics Committee of Ukraine as of 01.07.2000, the operations of 1 991 JSCs have been analyzed. Of these, 78,2% (1556 JSCs) are profitable and 435 JSCs are loss making. The total profit amounts to UAH 1 843.6 mln, and total losses - UAH 1 068 mln.

Wage arrears constituted UAH 725 354 thous., which is 57%. To date, as compared to the beginning of the year, accounts payable on wages increased by UAH 18 355 thous. In 11 regions the accounts payable decreased.

Financial indicators calculation (solvency, liquidity, profitability) proved that almost at all enterprises the indicators are lower than normative, which witnesses about the enterprises' inability to timely repay their liabilities and the lack of own working capital.

The performed analysis testifies of unstable financial status of open JSCs with a state-owned share. The main reasons are:

- inability of JSCs to operate under the conditions of the market economy, that is lack of professional management and marketing;
- lack of corporate culture (abuse of powers by company Management, poor understanding of the fact that distribution of JCS's income is first of all a prerogative of the general shareholders' meeting);
- presence numerous non-liquid assets in JSCs, which are not involved in the production process;
- decrease of working capital during previous years by means of wide-spread use of barter and give and take based schemes;
- uncontrolled use of schemes for the flow of financial and commodity resources;
- lack of basic payment discipline;
  
- application of outdated technologies and depreciated (on average, more than 50%) assets;
- supporting significant number of social infrastructure objects by companies.

It is necessary to pay attention to a significant part of the overdue debts, which, in turn, negatively influence OJSC's solvency.

To repay debts to the budget and in respect of other obligatory payments, the sale of OJSC's property is being performed which is under a tax lien. During the first half a year from the sale of such property UAH 2.86 mln. has been paid to the Pension Fund; arrears of wages constituting UAH 0.53 mln. have been repaid; UAH 5.54 mln. outstanding to the budget as well as UAH 108.57 mln of other budgetary items have been repaid.

The total amount received from the debtors by selling property that was under a tax lien, makes up UAH 117.5 mln. but sometimes the unreasonable attachment of OJSC's property is carried out by the state tax administrations and executive authorities. The property which is under a tax lien is sold by way of expert evaluation which is much lower than the residual value.

With the purpose of the joint-stock companies' ownership rights protection which are in the process of privatization as well as preservation of these enterprises' shares appeal, the Fund offered to amend the Decree of the Cabinet of Ministers of Ukraine 'On Approving the Procedure on Imposing Recovery on Property Under Tax Lien for Repayment of the Taxpayers' Tax Debts and Sale of Such Property".

The financial analysis of the OJSC's is carried out by the specially established commission for the financial analysis of a company. As of 06.09.2000 the financial analysis of 102 OJSCs has been carried out. The results of the analysis are submitted for further consideration by the Committee's session.

According to the Decree dated 15.05.2000 #791 "On Managing State Corporate Rights" the mechanism of defining the tasks for the representatives of the state in the boards of OJSCs has been developed. For performance of these tasks the representative of the state should improve the basic parameters of financial and economic activity of the enterprise such as net income, distribution of dividends and reserve fund, volumes and profitability of production as well as assist in repayment of arrears on wages, debts to the budget and Pension Fund.

Besides the task provides for implementation of measures on due payment of dividends accrued to the shares which belong to the state by the state representative; transfers of payments to the State budget of Ukraine;

Preventing issuing activity or endorsement, guarantee of bill of exchange, voucher or other forms of liabilities on bills of exchange or other securities,

commodity or stock derivatives, conclusion of a pledge contract, guarantee or assuming the commitments for third persons including transfer of the right of demand or debt transfer as well as conclusion of the contracts of factoring.

Before liquidation the National Agency aiming at observance of the Decree dated 3.06.99 #951 "On State Corporate Rights Management Authority Delegation to the Council of Ministers of Autonomous Republic of Crimea, Ministries, Other Central and Local Executive Authorities" has delegated the functions of the government corporate rights management of 600 economic partnerships to the bodies of the executive authority.

The Fund has prepared the Decree of the Cabinet of Ministers of Ukraine dated 15.05.2000 #791 "On the governance of governmental corporate rights" and General Agreement on powers delegation to perform functions of managing the State corporate rights to the bodies of the executive authority.

The fund carries out support of the contracts of agency with the authorized persons according to the Ukrainian legislation in force and terms of the contracts.

On the basis of the annual and quarterly reports of the authorized persons the efficiency of performance by the authorized persons of the contractual obligations is analyzed.

Taking into account the above mentioned there can be made a conclusion that the governance of governmental corporate rights performed by means of application of the specified mechanisms of influence on the enterprises activity provides necessary and sufficient participation of the state in this process as well as the state control of state of the art in these economic partnerships.

Legislative basis for managing governmental corporate rights as a whole is generated at the highest legislative level but in order to complete it, it is necessary to enact the Law of Ukraine "On Joint Stock Companies"; to establish a significant number of the departmental regulations directed on regulation of the relations connected with practical realization of the governance of governmental corporate rights.

The analysis of organizational structure and legislation relating to the governance of governmental corporate rights provides the reasons to claim that as a whole they have been generated. Their further development can be realized in the direction of improvement of existing organizational mechanisms and increase of capacity of the legislation in force. At the same time, the governance of governmental

corporate rights efficiency depends on the state strategic policy in this field, in particular, concerning the state property role and efficiency in general as well as on their concrete essence. And only a fundamental merger of the general and the concrete can result in a positive joint outcome.

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