

***CONTEMPORARY FINANCIAL AND  
LEGAL FACTORS OF ACTIVITY AND THE  
STATUS OF COLLECTIVE INVESTMENT  
INSTITUTIONS IN UKRAINE***

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**Abstract**

Admits traditional method, the competitive source of investment in Ukraine is the collective investment institutions. The legal regulation of the activities of collective investment institutions in Ukraine is complicated to apply, has many inconsistencies, the investment process is sophisticated for both internal and external investors. The elimination of these contradictions determines the relevance of the research, since the latest consistent research

of the current problems of applying the legislation of Ukraine to collective investment institutions is appropriate. The purpose of the research is to assessment of key factors of legal regulation of collective investment institutions in Ukraine, analysis of functioning problems of collective investment institutions in Ukraine and ways of addressing them. Regulatory inconsistencies in the status of collective investment institutions have been identified, proposals to enhance the activities of collective investment institutions have been formulated, proposals aimed to improve the effectiveness of state supervision of collective investment institutions have been suggested, proposals of taxing investors have been submitted.

**Keywords:** collective investment institutions, co-investment, financial intermediaries, financial operations, shareholder.

## **INTRODUCTION**

### **Scientific, Practical Problems.**

At a current stage of development of Ukrainian economy, there is an acute problem of finding and accumulating internal sources of finance investments in the real sector. Admits traditional method, the competitive source of investment in Ukraine is the collective investment institutions which seriously compete with banks to date. The legal regulation of the activities of collective investment institutions in Ukraine at the stage of active systematic approbation, the legislation is not codified, and therefore it is sophisticated to apply, has many inconsistencies, regulatory substitutions, which complicates the process of understanding the activity of collective investment institutions, mitigates the investment attractiveness of this type of investment, inhibits the attraction internal and external investors. The current consistent research of

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urgent problems of applying the legislation of Ukraine to collective investment institutions is appropriate.

Such Ukrainian scientists have been studying this problem. Yu. Zhornokui considered co-investment institutions as subjective rights. V. Moroz outlined economic algorithms for the movement of funds with the participation of joint venture institutions. I. Chaikovska researched and identified the problems of practical attraction of investments through mutual investment institutions. V. Levchenko described an alternative non-banking mechanism for investing by individuals. Y. Fogelson outlined the prospects for the investment market with the participation of joint venture institutions in post-Soviet economies. O. Sheverdyna analyzed the mechanism of legal regulation of public administration of joint investment institutions

### **The Purpose of the Research.**

The assessment of key factors of legal regulation of collective investment institutions in Ukraine, analysis of the functioning problems of referred objects and normative regulation of the activities of collective investment institutions, the formulation of proposals to address the contradictions in the regulation of collective investment institutions, in particular state supervision and the tax sphere, determining ways forward in addressing.

*The research object:* the mechanism of state regulation of the investment sphere, the activities of collective investment institutions. *The subject of research* is actual operations of the institutions of collective investment in Ukraine.

**Research methods:** special legal methods were applied. The method of specific sociological research was useful for us to analyze overall development of collective investment institutes in Ukraine; the utilization of content analysis allows us to separate the problems of tax policy in relation

to collective investment institutions; statistical method of research allows us to estimate the economic state of development of the collective investment institutions services market; the formal legal research method allowed us to assess the regulatory controls in the scope of collective investment institutions.

## **RESEARCH RESULTS**

### ***THE FIRST TOPIC: CURRENT STATE OF REGULATION OF COLLECTIVE INVESTMENT INSTITUTIONS (ANALYSIS OF THE THEORETICAL PROBLEM)***

Since the adoption of the Law of Ukraine “On Collective Investment Institutions (Unit Funds and Corporate Investment Funds)”, the Ukrainian stock market has received new players-participants - collective investment institutions.

In accordance with the Law of Ukraine “On Collective Investment Institutions (Unit Funds and Corporate Investment Funds)” dated March 15, 2001, collective investment institution is a corporate investment fund or an unit investment fund that carries out activities related to pooling (raising) funds of investors with the aim of profit from investing in securities of other issuers, corporate rights and real estate. Asset management company is a business company that carries out professional activity of managing assets of collective investment institutions on the basis of a license issued by the National Securities Commission and Stock Market.<sup>1</sup>

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<sup>1</sup> Law of Ukraine, No. 5080-VI.

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Relationships in the scope of collective investments are governed by the Law of Ukraine “On Collective Investment Institutions” and other normative-legal acts concerning stock’s market functioning and on the activities of joint-stock companies in the section that does not contradict the norms of the Law of Ukraine “On Collective Investment Institutions”, as well as other normative legal acts adopted in accordance with this Law.

The authors agree that the Law of Ukraine “On Collective Investment Institutions” defines the legal and organizational principles for the creation, operation and liabilities of collective investment entities, specifics of the management of these entities’ assets, establishes the requirements as to the composition, structure and storage of such assets, specifics of the placement and turnover of securities of collective investment institutions, the procedure and extent of their disclosure of information with the aim of attraction and effective allocation of investors’ financial resources.

The purpose of this Law is to govern relations arising in the field of collective investment for the establishment and operations of collective investment entities, to ensure guarantees of property rights to securities and protect the rights of stock market participants.

Since independence, Ukraine has adopted hundreds of laws designed to regulate new areas of public relations. Many of them predetermine and symbolize the transition from the past to the future, from the administrative to the market economy, so to speak, the transition to a new format of interaction between man, economy and the state. In our opinion, the Law of Ukraine “On Collective Investment Institutions (Unit and Corporate Investment Funds)” is one of these laws. The law has become the legal foundation on the basis of which several dozens of by-laws and regulations have been adopted. This law laid the foundations of a systematic approach to

legal regulation and established “rules of the game” in the collective investment market. The transitional provisions of the Law of Ukraine “On collective investment institutions” introduced a mechanism for the transformation of previously created investment funds and companies, created in accordance with the procedure established by law before the Law enters into force, in collective investment institutions. With the implementation of the Law of Ukraine “On Collective Investment Institution” the creation of investment funds and investment companies was prohibited.<sup>1</sup>

After the entry into force of the Law of Ukraine “On Joint Stock Companies”, as noted by O.M. Pylypchuk arose the need to amend the Law of Ukraine "On Collective Investment Institution". The authors agree with this opinion, because the peculiarities of the creation, functioning and liquidation of corporate investment funds continued to be regulated by the norms of the Law of Ukraine “On Business Companies”. After the adoption and entry into force of the Law of Ukraine “On Joint-Stock Companies”, many practical problems arose regarding the application of the norms of this Law for corporate investment funds. This required the concentration of all legal norms governing the activities of corporate investment funds in one legislative act. The stability of the legislation governing collective investment is the basis for the sustainable functioning of this market sector.<sup>2</sup>

Adopted in July 2012, the Law of Ukraine “On Collective Investment Institutions” No. 5080-VI (Law) is aimed at ensuring the attraction and effective allocation of financial resources of investors, defines the legal and organizational basis for the creation, activities, termination of collective

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<sup>1</sup> Moroz, 2011, p.99.

<sup>2</sup> Pylypchuk, 2017.

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investment entities, especially the asset management of these entities establishes requirements for the composition, structure and storage of such assets, especially the issue, circulation, accounting and redemption of securities of collective investment institutions, and also order to order disclosure of information about their activities. We note that this Law came into force on January 1, 2014 and was the result of nearly twenty years of development of the investment funds industry in Ukraine. We believe that the system of legal regulation and the level of codification of this law has almost no analogues in the countries of the European Community, as well as the CIS countries.

The need for the adoption of the new Law on Collective Investment Institutions, according to O. V. Harahonych, is caused first of all by the need to determine the order of formation, activity and termination of collective investment institutions in the conditions that have arisen in connection with the adoption of the Law of Ukraine “On Joint Stock Companies” and improvement management systems for collective investment institutions, including systems for disclosing information about their activities, improving the order of creation, operation and liquidation of investment funds, increase the efficiency of state regulation of the system of collective investment institutions.<sup>1</sup>

In our opinion, in adopting the Law, the legislator was guided by the principle of “one scope - one law”. Article 2 of the Law states that its effect extends to public relations arising in the field of collective investment in connection with the formation and activity of collective investment entities, in order to guarantee the ownership of the securities of the collective

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<sup>1</sup> Harahonych, 2014, p. 28.

investment institutions and the protection of the rights of the participants of collective investment institution.

It is known that public relations in the field of collective investment include legal, economic, ethical and other relations. So, when managing a collective investment institution, social relations may arise that are not legal and are of significant importance, for example, an investor analyzing a collective investment market to select a collective investment institution. Legal relations in the field of collective investment are cross-sectoral nature and include civil law, constitutional law, administrative, financial, investment, criminal law and other legal relations. At the same time, according to the authors, using the concept of “collective investment”, the Law does not disclose its content. In terms of legal theory, collective investment entities should be considered Asset Management Company and Corporate Investment Fund. Unit investment funds do not belong to the category of “collective investment entities” because they are an object of civil legal relations. Therefore, the Law should specify that its scope also extends to the public relations arising in the field of collective investment in connection with the creation and activity of unit funds.<sup>1</sup> Regarding the guarantees of the ownership rights of the securities of collective investment institution, they are provided, in particular, by the legal model of the collective investment institute, the diversification mechanism, the control over the activity of the asset management companies and joint venture companies, the establishment of the liability of the asset management companies, the limitation of the activities of the joint venture companies, asset management companies and collective investment institutions. The law

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<sup>1</sup> Krynytsia, 2013, p. 99.



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does not extend to public relations arising in connection with the formation and activities of other funds involved in investment activities. The Law applies only to the functioning of collective investment institutions, that is, to collective investment.

By structure, the Law on collective investment institution has a "deductive-inductive" symmetry. After regulating the most common and fundamental issues of joint venture, it proceeds to the structure, structure, procedure for determining the value of collective investment institution, net assets, placement, circulation, redemption of securities of collective investment institution, order of disclosure of information about collective investment institution, features of the legal status of Asset Management Company, custodian of assets of collective investment institution, value of assets of collective investment institution, the auditor (audit firm) and other more specific issues of collective investment.<sup>1</sup>

Despite all the advantages of the Law of Ukraine "On Collective Investment Institutions" over the previous law, this law does not solve a number of significant gaps in the legislation on collective investment. In particular, the issue of a common understanding of such important concepts as: the concept of "collective investment activity" and "asset management activity" has not been resolved. Today, there are conflicts in the interpretation of these concepts. In the process of further transformation of market relations in Ukraine, there was a need to distinguish between investors and institutional and unskilled ones. This division is fully consistent with international practice and has been partially embodied in Ukrainian law. Institutional investors in Ukraine are investment funds, unit funds of investment companies, non-

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<sup>1</sup> UAIB, 2019.

governmental pension funds, insurance companies, and other financial institutions. Article 4 of the Law of Ukraine “On State Regulation of the Securities Market” defined asset management activity as a professional activity of a stock market participant - an asset management company, which conducts its activity for remuneration on its own behalf or on the basis of a relevant asset management agreement belonging to institutional property investors. A similar definition contains Art. 18 of the Law of Ukraine “On Securities and the Stock Market”, according to which the activity of managing the assets of institutional investors is the professional activity of a stock market participant (Asset Management Company), which is carried out by it for a fee on its own behalf or on the basis of a relevant agreement on the management of the assets of institutional investors. In addition, in some legislative acts, asset management activities are limited only to the management of assets owned by institutional investors, the list of which is clearly defined. Therefore, it turns out that the Law on State Regulation of the Securities Market and the Securities and Stock Market of asset management, for example, an open-ended unit trust whose investors own its assets, is not considered professional asset management activities, since the institutional investor (Unit Fund) does not own these assets. Thus, in Ukrainian legislation there is no single approach to the interpretation of the concept of “asset management activities”.

It should be agreed with the definition of such an activity, which offers M. M. Yermoshenko: “this is the professional activity of a stock market participant – asset management company, it is carried out for a fee on its own behalf or on the basis of an appropriate agreement on the management of

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assets owned by institutional investors, investment investors and participants of pension funds on the basis of ownership”.<sup>1</sup>

Prior to the introduction of the Law of Ukraine on Collective Investment Institutions, the United States Agency for International Development (hereinafter - USAID) made certain observations to the new law, as follows: The Act amends the Securities and Stock Market Act and separates corporate investment fund shares into a separate type of securities. This approach seems appropriate. The law defines a corporate investment fund as a legal entity, is formed in the form of a joint stock company and carries out exclusively collective investment activities. The procedure for creating a corporate investment fund is similar to the procedure for creating an ordinary joint-stock company with peculiarities due to the nature of the investment fund. The Markets in Financial Instruments Directive of (“MiFID”) distinguishes among financial instruments, in particular, securities to be traded, and units in joint investment institutions. USAID specifically focuses on corporate governance of corporate investment funds. The regulation of the Law of Ukraine “On Collective Investment Institutions” of co-investment relations is unnecessary, as it is already defined by the Law of Ukraine “On Joint Stock Companies”. A significant issue in USAID analytics is the exclusion of liability of collective investment institutions for reducing the value of assets.<sup>2</sup>

Since the fields of investment are sufficiently “mobile,” the legal regulation should be appropriate. We convinced that the closest prospect for the development of legislation in the field of collective investment should be the coordination of terminology and simplification of state regulation.

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<sup>1</sup> Sheverdyna, 2013.

<sup>2</sup> Pylypchuk, 2017.

Another component of the legal status of co-investment institutions in Ukraine is taxation of collective investment institutions. Investment fund management is managed by asset management companies licensed by the Stock Market Participant Commission. Funding and managing a fund is quite a complicated process. In terms of taxation there are preferences. The Tax Code of Ukraine provides that any income from the activities of a collective investment institution is exempt from income tax. That is, while most legal entities on the general taxation system must tax their profits at a rate of 18%, the profits of an investment fund are tax exempt. This tax regime is somewhat reminiscent of a distributed profit tax, because if the fund's received income remains in circulation and is not paid to investors, then no taxes should be paid. Only the distribution of profits of the collective investment institutions is subject to taxation, that is, the payment of dividends.

There is a peculiarity about dividends from co-investment institutions. There are no special benefits or investors (legal entities). Legal entities receive income, include it in the financial result and tax profits at a rate of 18% and only after that they can pay dividends to individual founders with a taxation of 6.5% (5% of income tax on individuals and 1.5% military levy). Since 2017, individual investors have received a more interesting norm: if earlier the tax rate on income tax on individuals on dividends from collective investment institutions was 18%, and it is only 9% in current year. This means that an individual investor of an investment fund can receive income from activities of collective investment institutions with a total tax burden of only 10.5% (9% personal income tax and 1.5% military levy). In addition, if the investor refrains from receiving dividends in the current period, then such a payment, respectively, the fulfillment of such a tax obligation can be deferred,

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and the accumulated funds of the collective investment institutions can be used for further investments.

The above preferences are a sufficient reason for investors to open an investment fund and commence to carry out economic activities through it. However, even those who do not want to change the structure of their business can significantly optimize the tax burden on it due to the use of collective investment institutions. However, despite the existing shortcomings in legal regulation, collective investment institutions in Ukraine is showing steady growth. Thus, according to the Ukrainian Association of Investment Business, the total assets of the collective investment institutions in management, including those that have not yet reached the minimum asset standard, also increased by 3.3% for the 3rd quarter of 2019 and by 16.4% for the year (since the beginning of the year, the increase was 11.2 %), up to 348 304.6 million UAH.

Assets of existing collective investment institutions that have reached the minimum assets standard (“recognized” collective investment institutions) for the 3rd quarter had a similar increase (+3.3%), for 9 months of 2019 they grew by 14.5%, and for the last 2019 they slowed down to +15.8%. As of September 30, 2019, they amounted to 339,921.7 million UAH. Quarterly growth occurred almost exclusively at the expense of venture capital funds, the number of which continued to increase, although interval collective investment institutions also increased over this period (the number has not changed, but the cost of portfolio investment collective investment institutions has generally increased). Other sectors, including open-ended funds, suffered a decrease in assets amid further decline in stock indices in the 3rd quarter.

In July-September 2019, the net asset value of collective investment institutions (“recognized”) assets accelerated quarterly growth to 3.7%, and decelerated to + 13.6% from September 2018 (from the beginning of the year - added 12.1%). As of September 30, 2019, the net asset value of stakeholders of collective investment institutions as a whole reached 264 302.1 million UAH.<sup>1</sup>

Revealing the general legislative characteristics of the collective investment institutions, it is necessary to consider such an important issue as state regulation. So, when assessing the risks of capital allocation, any investor is always interested in the issue of state control, its degree and limits.

### ***THE SECOND TOPIC: NATIONAL SECURITIES AND STOCK MARKET COMMISSION***

State regulation in the field of collective investment is carried out by National Securities and Stock Market Commission in accordance with the Law of Ukraine “On State Regulation of the Securities Market in Ukraine”. With the release of this normative act, questions of the ambiguity of interpretation of some concepts arose. In order to eliminate the duality and ambiguity in the interpretation of terms, the Law defines them.<sup>2</sup>

To date, state regulation in this field regarding collective investment is carried out by the National Securities and Stock Market Commission, which operates in accordance with the laws of Ukraine “On State Regulation of the Securities Market in Ukraine” and “On the Depository System of Ukraine”. In addition, other state bodies are vested with the functions of implementing the regulatory policy in the field of the circulation of securities and exercise

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<sup>1</sup> UAIB, 2019.

<sup>2</sup> Chernadchuk, Sukhonos, Chernadchuk, 2005.

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control over the activities of the participants in the securities market within the scope of their authority determined by applicable law.

The purpose of the activities of the National Securities and Stock Market Commission is to create, through its regulatory and supervisory functions, the conditions for the proper and efficient functioning of the securities market, to provide the monetary capital of the needs of the country's economy by creating a mechanism for accumulation, distribution and redistribution of funds from a person who possesses free investment resources to the person who needs such resources for development, creation of conditions for becoming powerful internal investors and providing protection that investor rights.<sup>1</sup>

The National Securities and Stock Market Commission carries out state regulatory activities in accordance with the requirements of the Law of Ukraine “On the Basics of State Regulatory Policy in the Sphere of Economic Activities”.

The main activities of the National Securities and Stock Market Commission in the scope of regulation are:

- development of draft regulatory acts on the securities market;
- adoption of regulatory acts;
- amendments to regulatory acts;
- analyzing the regulatory impact of regulatory acts;
- monitoring the effectiveness of adopted regulatory acts.<sup>2</sup>

The control function of the Commission aims to facilitate compliance with legal requirements; prevention of violations (abuses) in the securities market;

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<sup>1</sup> NSSMC, 2013.

<sup>2</sup> Zhornokui, 2015, p. 87.

ensuring the observance of the rights and interests of investors and other stock market participants; identification of trends and risks in the functioning of the stock market.

Control is carried out by the Commission by conducting scheduled and unscheduled inspections, respectively, in accordance with the current “Procedure for conducting inspections of compliance with the requirements of the securities legislation for professional activities in the stock market and the activities of self-regulatory organizations of professional stock market participants”, approved by the Decision of the National Securities and Stock Market Commission from December 02, 2013 No. 161. Accordingly, inspection helps to identify problematic issues in risk-enhancing activities that may lead to securities market offenses and to formulate proposals with improvement of legislation to address deficiencies and gaps in the functioning of the stock market.

The structure of the National Securities and Stock Market Commission consists of its central office and territorial bodies, which are management and branches. In turn, the National Securities and Stock Market Commission is created by its Chairman and six members, who are appointed and dismissed by the President of Ukraine in agreement with the Verkhovna Rada of Ukraine.<sup>1</sup>

The National Securities and Stock Market Commission, within its competence, develops and approves legislative acts binding for central and local executive authorities, local authorities, securities market participants, their associations, and also monitors their implementation. It is within the competence of the National Securities and Stock Market Commission to

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<sup>1</sup> Law of Ukraine, No. 448/96-VR



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appeal (petition) to court or an economic court in connection with a violation of the legislation of Ukraine on securities. The Law of Ukraine “On State Regulation of the Securities Market in Ukraine” in Art. 7 in order to ensure compliance with the legal basis in the field of circulation of securities and the implementation of the functions of the National Commission for Securities and Stock Market, its main tasks are provided.<sup>1</sup>

The activities of the National Securities and Stock Market Commission are carried out in close cooperation with law enforcement agencies. In this regard, at the request of authorized persons of the National Securities and Stock Market Commission, law enforcement agencies provide the information at their disposal that is necessary to ensure proper control of the securities market. In the field of preventing and counteracting the legalization (laundering) of proceeds of crime from the state, financial monitoring is carried out, which is the measures that are carried out by the subjects of financial monitoring in the field of preventing and counteracting the legalization (laundering) of proceeds of crime or the financing of terrorism, including conducting state financial monitoring and primary financial monitoring.<sup>2</sup>

The privatization bodies are obliged to provide the National Securities and Stock Market Commission with the necessary documents on state-owned objects, which are to be privatized if the securities are issued in the course of privatization in accordance with the current legislation.

The executive authorities are obliged to provide the National Securities and Stock Market Commission with the necessary documents and

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<sup>1</sup> *Ibid.*

<sup>2</sup> NSSMC, 2013.

information on matters within its competence in order to comply with the requirements of the current legislation on the securities market.<sup>1</sup>

However, in addition to their own powers, officials of the National Securities and Stock Market Commission are responsible for failure to perform or improperly discharge their official duties in accordance with the procedure established by the legislation of Ukraine. Unfortunately, caused by the securities market participants misconduct of the National Securities and Stock Market Commission during the exercise of control and administrative powers, is subject to full compensation at the expense of the state in accordance with the current legislation.

***THE THIRD TOPIC: INVESTMENT ATTRACTIVENESS  
OF THE COLLECTIVE INVESTMENT INSTITUTIONS IN  
UKRAINE (PROSPECTS AND RECOMMENDATIONS FOR  
MINES)***

Analyzing the current legislation and the state of activity of the collective investment institutions to improve the prevention of offenses, we agree with the comments of the National Securities and Stock Market Commission, which should be followed in the following measures:

- conducting periodic interviews with the management of individual participants of the securities market regarding applied business practices, existing conflicts of interest, the state of work with shareholders and investors, and measures taken to manage risks;
- holding conferences and seminars - periodic meetings with a wide range of securities market participants;

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<sup>1</sup> NSSMC, 2013.

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- clarification of legislation - recommendations on actions and application of practical measures that help improve compliance with the law have been made public.

The activities of collective investment institutions in Ukraine have their disadvantages, but there are ways to solve them.

The collective investment institutions system, in our opinion, is the best option for the population to access the securities market, including and stocks. With more than 150 years of history of operation, investment funds are in serious competition with banks for free funds. If to make a comparative characteristic of investing in a bank, to carry out self-management or in collective investment institutions, in the opinion of authors, collective investment institutions have significant advantages.

Table 1. *Comparative characteristic of investing in a bank*

<i>Description</i>	<i>Bank</i>	<i>Self-government</i>	<i>Collective investment institutions</i>		
			<i>open-ended</i>	<i>interval</i>	<i>closed-ended</i>
Income	minimal	depends on the qualification of the investor	average	average	high
Risk	minimal	depends on the qualification of the investor	average	average	high
Investor qualifications	zero	high	minimal	minimal	minimal
Taxation	not taxable	income from the sale of securities - minus the cost of their acquisition – 15%	dividends paid by asset management companies as a result of the distribution of profits of corporate investment funds and mutual funds are taxed at the rate of 5%. The investment income from the sale of the Fund's securities is taxed at the rate of 15% (occurs only with the termination of the ownership of the Fund's securities)		

Costs	minimal	broker's commission + trading terminal fee + other expenses	payment of compensation to the asset management company, custodian, registrar, property valuer and auditor, other expenses related to the management of the Fund. Their amount may not exceed 10% of the annual average value of the Fund's net assets		
Liquidity	high	depending on the objects and amount of investment	high	low	very low

Source: Authors.

In recent years, the Ukrainian collective investment institutions market has shown positive growth dynamics and provided investors with a high level of investment income that exceeded the yield on bank deposits.

In any field of activity there are pros and cons, and collective investment institutions activities are no exception. Therefore, in the opinion of the authors, identifying the problems of collective investment institution activities and how to solve them is an important issue in this research.

We consider that one of the main problems that do not allow to fully utilizing the investment potential of the collective investment institutions market is the low level of public awareness about collective investment institutions. The annual increase in the number of non-bank financial institutions, accompanied by an increase in the supply of financial services in the market, leads to the fact that market participants, as well as consumers of financial services, need to have access to information related to the activities of these institutions and characterize the general state of the financial services market. An effective information base helps to make sound conclusions about the prospects for the development of the financial services market of its

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individual sectors, participants, etc.<sup>1</sup> The problem is precisely the lack of transparency and openness of investment companies in their relations with the consumer of financial services, lack of awareness. Unfortunately, individuals and legal entities that direct their funds to certain investment mechanisms in order to make a profit or achieve a social effect are not able to obtain the necessary public information to minimize the risks that may arise with their own funds.

We consider that one should pay attention to the opinion of Yu.B. Fogelson, who notes that in order to somehow solve the problems of risk assessment, the legislation of many countries requires financial institutions to disclose in an accessible form to consumers information about the risks associated with the acquisition by a customer of a proposed product's benefits and losses that may be caused by the acquisition of a certain product.<sup>2</sup>

The following of the example of this problem: if there is a goal to acquire housing through an collective investment institutions, or to put funds in order to make a profit, you cannot be sure that this financial institution is solvent and is able to rally the funds attracted by the consumer when a crisis occurs. Therefore, in our opinion, disclosure of information is of great importance in these markets. The current legislation does not provide consumers with specific information about where the investor's money is invested and what transactions are carried out with them. In practice, this information is also not published by financial institutions.

To solve this problem, we propose the following. The obligatory creation by each professional participant of the investment market of their site, on

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<sup>1</sup> Levchenko, 2013, p. 123.

<sup>2</sup> Fogelson, 2010, p.124.

which all the necessary information for consumers regarding the investment of their funds would be clearly and understandably stated. In our opinion, information on the standards of solvency and financial stability of the company is important, understandable to investors and should be confirmed by an audit report and published on the company's website, as well as complete information about the movement of investments in collective investment institutions. In relation to persons planning to become investors of the relevant collective investment institutions, we believe that it would be appropriate to inform them about the collective investment institutions investments before making investments to conclude the relevant agreements.

Another global issue to support the development of investment funds is expanding their presence in different regions to allow more individuals to become participants. The best way to resolve this issue is to utilize an existing network of banking branches to provide co-investment services.<sup>1</sup> In this regard, it is necessary to establish cooperation with banking institutions and investment funds in the direction of the implementation of certificates of investment funds in bank branches. This approach will allow to realize the needs of the population in investment activities, will ensure the inflow into this sphere of significantly larger amounts of financial resources of private investors. The stimulating factor in the development of non-banking financial institutions in general and collective investment institutions in particular is the lack of reliable financial instruments in the domestic market in which the assets of the asset management company can invest. In particular, government

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<sup>1</sup> Moroz, 2011, p.103.

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bonds remain an unattractive investment instrument because of low liquidity and yield (below inflation).<sup>1</sup>

In our opinion, a significant problem remains the method of correct valuation of collective investment institutions net assets. The current regulation of the National Securities and Stock Market Commission, which regulates this issue, allows companies to arbitrarily evaluate the net assets of the collective investment institutions under their management. This leads to distortion of information, further undermines the confidence of the population. The issue of taxing investment income in various financial institutions remains unresolved. For example, the interest accrued on bank deposits is not taxable; at the same time the income received by citizens from investing in collective investment institutions collective investment institutions is taxed.

Perhapsthe biggest problem that impedes the development of institutional investors in Ukraine in general and the collective investment institutions in particular is the general state of the stock market development, its institutional immaturity. In this context, it is advisable to highlight the following negative properties of the stock market:

- the prevalence of the unorganized market over the organized;
- the presence of several trading platforms where securities are traded, which makes it difficult to control these operations;
- low stock market liquidity;
- small number of securities traded on the stock exchange, limited number of stock market instruments;

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<sup>1</sup> Chaikovska, 2012.

- manipulation of market participants in order to overestimate the value of net assets of investment funds, etc.<sup>1</sup>

Thus, the incompleteness of the process of institutional formation of the collective investment institutions market suggests that it is ineffective and, in certain areas, the impossibility of using the potential of this institutional form in the aftermath of the crisis recovery in the financial sector of Ukraine. But on the other hand, a general decline in interest in financial investments and a sharp increase in their riskiness can be used to modernize this component of the financial system. For this purpose, the policy of the state should be directed to the systematic development of the collective investment institutions market and its infrastructure in order to eliminate the general underdevelopment and improve the quality parameters.

To solve a number of these problems, we join the current proposals that measures should be taken that will be aimed at revealing and strengthening the investment potential of the collective investment institutions.

- bringing the laws governing the activities of the collective investment institutions, with the requirements of European law and the adoption of the Investment Code (the process in this direction has commenced);

- strengthening control over issuers whose securities are traded on a regulated market in order to improve the quality of assets;

- expanding the investment tools available for collective investment institutions, including the introduction of high value derivative securities;

- preferential taxation of investors investing in collective investment institutions for the long term or reducing the rate of investment income taxation;

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<sup>1</sup> Ryabchikova, 2010.



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- improving the methodology for calculating the value of collective investment institutions net assets;

- Simplification of the procedure for issuing securities of collective investment institutions;

- conducting outreach to popularize among the population of Ukraine the implementation of investments in the collective investment institutions market.

Any field of activity has its shortcomings; the activity of collective investment institutions is no exception. The main disadvantages of the collective investment institutions are:

- low level of public awareness of collective investment institutions. The problem is precisely the lack of transparency and openness of investment companies in their relations with the consumer of financial services, lack of awareness. In our opinion, the solution to this problem would be to create a website as a source of information about a particular company;

- insufficiency in the internal market of reliable financial instruments, in which the funds of the asset management company can invest. In particular, government bonds remain an unattractive investment instrument because of low liquidity and lower yields (below inflation);

- the question of taxation of investment income in various financial institutions. So, for example, interest accrued on bank deposits is not taxable, while income received by citizens from owning funds in collective investment institutions is taxed;

## **CONCLUSIONS**

The system of legislation in the scope of investment activity is branched and includes a significant number of regulatory documents. The reason for this state affair is the dynamism of relations in the scope, which is characterized by great complexity. To avoid deepening this problem, the legislator should pay more attention to optimize legal support of these relations. It is necessary to adopt investment code to carry out such optimization, where all prescriptions in the scope of investment will be systematized. It is also worth paying attention to the presence of pre-reform legislative acts, which in their content contradict the principles of legal alignment during the formation of market relations, as the investment scope is rapidly changing, and legal regulation should be appropriate. All of the above are key issues of financial security of Ukraine.

Since collective investment is a relatively new type of investment in Ukraine, the mechanisms of state regulation of this category of relations is only being formed, their effectiveness is tested by practice in the context of rapid changes in the economic environment under the influence of global factors and foreign experience.

The National Securities and Stock Market Commission as a public administration body, implements not only control, but also regulatory policy in the scope of regulation of collective investment institutions. The National Securities and Stock Market Commission is endowed with the function of standard-setting activity, which is a positive factor since access to company reporting is appeared as this commission is more knowledgeable about CII regulation.

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The main function of CII is to accumulate investors' funds investing in securities of other issuers, corporate rights and real estate to profit.

Collective investment institutions is a powerful and real investment instrument for reactivation of Ukrainian economy.

In the activities of collective investment institutions in Ukraine, the following problems can be identified for further address:

- low level of public awareness of CII; the lack of transparency and openness of investment companies in their relations with the consumer of financial services. The creation of appropriate websites with easy access by the population is the solution;

- insufficiency in the internal market of reliable financial instruments, in which the funds of the asset management company can invest. In particular, government bonds remain an unattractive investment instrument because of low liquidity and lower yields (below inflation). Although at the end of 2019, the Ministry of Finance of Ukraine carries out successful issuance of government bonds, but for most investors, such investments are highly risky due to the economic situation in the country;

- the question of taxation of investment income in various financial institutions. So, for example, interest accrued on bank deposits is not taxable, while income received by citizens from owning funds in CII is taxed;

In our opinion, the fact that the National Securities and Stock Market Commission is endowed with the function of standard-setting activity is, on the one hand, an upside in that it knows more about the problematic aspects of the implementation of CII activities, because it has access to company reporting, and on the other hand, downside because of absence of codified act, many normative acts are adopted and their layering occurs, which leads to confusion in the concepts of various categories of CII.

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