

# Dynamics of the Legislative Development of Public-Private Partnership in the Sphere of Agricultural Insurance in Russia and the US

## Dinámica del desarrollo legislativo de la asociación público-privada en la esfera del seguro agrícola en Rusia y los EE. UU.

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#### ABSTRACT:

The article analyzes theoretical approaches to the definition of the category of public-private partnership. The definition of public-private partnership is formulated taking into account the unique features of agricultural insurance in Russia. The historical way of formation and development of public-private partnership in the legislation of Russia is investigated: from the Petrine era to our time with the purpose of using time-based legal reception in the newest legislation of the Russian Federation, which regulates legal relations in the field of agricultural insurance. The authors studied the design of the current Russian legislation in the field of agricultural insurance, implemented with state support from the standpoint of public-private partnership, and analyzed

#### RESUMEN:

El artículo analiza enfoques teóricos sobre la definición de la categoría de asociación público-privada. La definición de asociación público-privada se formula teniendo en cuenta las características únicas del seguro agrícola en Rusia. Se investiga la forma histórica de formación y desarrollo de la asociación público-privada en la legislación de Rusia: desde la era de Petrine hasta nuestros días con el propósito de utilizar la recepción legal basada en el tiempo en la legislación más reciente de la Federación de Rusia, que regula las relaciones jurídicas en el campo del seguro agrícola. Los autores estudiaron el diseño de la actual legislación rusa en el campo del seguro agrícola, implementado con apoyo estatal desde el punto de vista de la asociación público-privada, y

the legal forms of this partnership used in US agricultural insurance (Du, Hennessy, Feng, 2014). It is concluded that there is a need to expand the interaction of government and business in Russia with a view to stabilizing the situation of the agrarians, at least, and the development of the entire agricultural sector of our country - as a maximum. Taking into account the temporal analysis of the Russian legislation in the sphere under consideration, as well as the experience of implementing a public-private partnership in the national legal system of the United States in the field of agricultural insurance, the authors examined several options for legal forms of introducing PPP in agricultural insurance of the Russian Federation. Firstly, the functioning of the legal model of PPP in the form of an insurance agrarian corporation with mixed capital of public funds and private insurer funds. Secondly, the creation of a state agrarian insurance company with 100% state capital. And, finally, thirdly, education in the field of agricultural insurance of mutual insurance societies. The conclusion is drawn that the model of mutual insurance societies is the most optimal variant of interaction between the government and business in the field of agricultural insurance, carried out with state support.

**Keywords:** public-private partnership, insurance, agricultural insurance, state support, insured, insurer, agricultural producer, agrarian

analizaron las formas legales de esta asociación utilizada en el seguro agrícola de EE. UU. (Du, Hennessy, Feng, 2014). Se concluye que es necesario ampliar la interacción del gobierno y las empresas en Rusia con el objetivo de estabilizar la situación de los agraristas, como mínimo, y el desarrollo de todo el sector agrícola de nuestro país, como máximo. Teniendo en cuenta el análisis temporal de la legislación rusa en el ámbito considerado, así como la experiencia de la implementación de una asociación público-privada en el sistema jurídico nacional de los Estados Unidos en el campo del seguro agrícola, los autores examinaron varias opciones para formas legales de introducción de PPP en el seguro agrícola de la Federación de Rusia. En primer lugar, el funcionamiento del modelo legal de PPP en la forma de una corporación agraria de seguros con capital mixto de fondos públicos y fondos de aseguradoras privadas. En segundo lugar, la creación de una compañía estatal de seguros agrarios con un capital estatal del 100%. Y, finalmente, en tercer lugar, la educación en el campo del seguro agrícola de las mutuas de seguros. Se saca la conclusión de que el modelo de mutualidades de seguros es la variante más óptima de interacción entre el gobierno y las empresas en el campo del seguro agrícola, llevado a cabo con apoyo estatal.

**Palabras clave:** asociación público-privada, seguro, seguro agrícola, ayuda estatal, asegurado, asegurador, productor agrícola, agrario

## 1. Introduction

Public-private partnership without exaggeration can be called the legal phenomenon of the third Millennium, which has deep socio-economic roots and which covers various legal systems (Zolotnikov, 2016). In the recent years, the trend of closer cooperation of government and business has become global. In the development of the modern Russian state to chart a course becomes more popular, acquiring the legal form of a public-private partnership in those spheres of life which, as a rule, are of strategic importance and which has traditionally been agriculture. (Gorodnova, Rozhentsov, 2016).

International practice confirms the need to build their own national programs in the field of insurance of agricultural risks in the form of public-private (PPP) partnership (hereinafter - PPP).

It should be noted that today in the Russian Federation, unlike the US program of PPP in the agricultural products insurance are not used widely enough to address important socio-economic challenges on a national scale, in particular to provide insurance protection to farmers.

However, temporal analysis of the development of this institution demonstrates the effectiveness of the use of the legal structure of PPPs at all stages of the legislative development of the Russian state until the Soviet period.

The purpose of this article is to analyze theoretical approaches to understanding the essence of a PPP with the goal of determining how the legal structure is used in the specific field of agricultural insurance and is publicly funded. This goal will contribute to the study of the Genesis of the formation of the PPP in agricultural insurance in Russia in the dynamics of its legislative development from the seventeenth century to the 21st century, and examine possible legal forms of PPP in agricultural insurance of the Russian Federation and the United States.

In addition, the authors see their mission in the development of proposals for legal structures for the functioning of the PPP in agricultural insurance in modern Russia taking into account the studied foreign experience and temporal analysis of PPP development in the domestic agricultural insurance.

## 2. The essential characteristics of PPP, defining its concept as a legal category

Letsdefine PPP as a legal category.

The term «public private partnership» - the literal translation of «public-private partnership» (PPP) – is used for a long time and actively used in the U.S. and some other countries in North America and Western Europe form and a closer interaction of government and business.

The modern scientific doctrine demonstrates many different approaches to the definition of what a «public private partnership» is.

For example, V. G. Varnavskiy under public-private partnership understands institutional and organizational alliance between government and business to implement socially important projects and programs in a wide range of industries and R & d, up to services (Varnavskiy 2010).

According to V. V. Shcherbakova such definition of PPP is unacceptably narrow, since it does not reflect all aspects of state participation in PPP. Not less essential elements of the partnership according to the scientist, are financing and providing guarantees, protection (legal and financial) (Scherbakov 2011). In this regard, it is proposed under PPP to understand the association of the competencies of the state and private business with the purpose of erecting them into a new quality of mutually beneficial relations based on the distribution of risks (functions and obligations) of the parties to resolve priority national tasks (Scherbakov 2011).

S. N. Silvestrov considers public-private partnership as an organizational alliance between the state institutions and business to implement large-scale or unique projects in various areas of life (Silvestrov, 2014).

N. V. Reznichenko suggests to understand under public-private partnership a long-term mutually beneficial contract between the public authority and the private sector, which presents a special management company, with the aim of creating public infrastructure and/or provision on its basis of services which: used a tangible and intangible resources of the public and private sectors; splited the risks, duties, rights, and benefits between government and the private sector; requirements for the result are determined by the state, and benefits between government, private sector and users (Reznichenko, 2010).

Association of Managers of Russia in the national report «Business Risks in public-private partnership» has formulated two approaches to understanding the essence of PPP (2009). The first approach tends to every interaction of business and government, which often include the supply of goods for the needs of ministries and agencies (2013). The proponents of the second approach, trying to specify the wording propose to consider PPP as a funding of a specific project, which in our opinion is similar to a concession agreement. In line with the recent one party (the concessionaire – individual entrepreneur; Russian or foreign juridical person) shall, at its own expense create and (or) reconstruct the property defined by this agreement, the ownership right which belongs or will belong to another party (the grantor – Of the Russian Federation), to carry out activities with the use (operation) of object of concession agreement, the concessionaire shall provide the concessionaire for a period specified in this agreement, rights of possession and usings object of concession agreement to implement specified activities (article 3 of the Federal law «On concession agreements») (2005).

In the international arena, the definition of PPP set out by the International organization «Economic and social Commission of the United Nations for Asia and the Pacific»: «Public-private partnership is the cooperation of the state with the private sector to the quantitative increase and a qualitative improvement in provision of infrastructure services. Partners, usually through a legally binding agreement or through some other mechanism, agree to share responsibility for the implementation and/or operation and management infrastructure project. Such cooperation is based on expertise of each partner that meets clearly defined public interest through appropriate allocation of resources, risks, responsibilities and

rewards» (2011).

The senior specialist of World Bank Jeffrey Delmon notes that «public-private partnership» is used in the broadest sense and means any contractual or legal relationship between public and private entities with the aim of improving and/or expanding infrastructure services, excluding contracts under the state order (public procurement). Public-private partnership is an approach to providing services in the field of infrastructure, which is fundamentally different from traditional public procurement and is associated with a number of challenges (Delmon, 2010).

It must be remembered that the relationship of public-private partnerships allowed the public partner to use activities of subjects of private law for implementation of state functions and rendering state services or to ensure the implementation of certain of such functions (services) by the private partner. In other words, the relationship of public-private partnerships allow you to bring the subject of private law for implementation of state functions (Losev, 2016).

Association of Managers of Russia in the national report «Business Risks in public-private partnership» has formulated two approaches to understanding the essence of PPP (2009). The first approach tends to every interaction of business and government, which often include the supply of goods for the needs of ministries and agencies in accordance with the Federal law of 05.04.2013 No. 44-FL «On contract system in procurement of goods, works, services for state and municipal needs» (2013). The proponents of the second approach, trying to specify the wording propose to consider PPP as a funding of a specific project, which in our opinion is similar to a concession agreement. In line with the recent one party (the concessionaire – individual entrepreneur, Russian or foreign juridical person) shall, at its own expense create and (or) reconstruct defined by this agreement the property, the ownership right which belongs or will belong to another party (the grantor – Of the Russian Federation), to carry out activities with the use (operation) of object of concession agreement, the concessionaire shall provide the concessionaire for a period specified in this agreement, rights of possession and usings object of concession agreement to implement specified activities (article 3 of the Federal law «On concession agreements») (2005).

However, agricultural insurance is a specific industry because its goal is to ensure food security in Russia. Therefore, PPP in the sphere of agricultural insurance has unique traits – characteristic that cannot be overlooked. This feature, for example, is tripartite composition relationships: the insured (the farmers), the insurer and the state. In the course of implementation of PPP, the government controls the choice as a policyholder of the insurer and the terms of the contract of insurance (Comlanvi, 2015). In this regard, it is the natural intention of the state to control and determine the relevant processes relating to the establishment of the necessary requirements for insurers, rates and conditions of agricultural insurance with public financial support.

Thus, it is possible to offer a definition of a PPP in agricultural insurance as mutually beneficial relations between the state represented by its competent authorities, on the one hand, and economic private actors, on the other hand, which are regulated by law and aimed at implementation of significant projects and programmes in the field of agricultural insurance in order to ensure food security of the Russian Federation.

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### **3. Background of the origin and modification of the legal basis of PPP: a temporal analysis**

The origins and legislative development of the legal structure of public-private partnership in insurance of agricultural risks demonstrate an important role of this Institute for the Russian state and its positive impact on agriculture as one of the most important sectors.

The first phase of implementation of PPP in Russia is marked by the legal innovations of Peter's time on the establishment in 1724 of «emergency bread» for the people in the lean years of hunger not to suffer (Bergman, 1840-1841). Here we can see essentially the first legal form of organization of the centralized insurance Fund, having the features of public-private partnerships: on the one hand, the state, and on the other estates – the food

suppliers.

The second stage of development of the legal structure of the PPP in the insurance of agricultural risks - formation in the Catherine era from 1763 bread shops resorted to in the lean years (Mesherskaya, 2017). Natural form of redistribution of the grain funds between the regions of Russia was a form of insurance protection, the experience of public-private partnership agricultural insurance.

Then at the legislative level, in 1864 the Zemstvo insurance was established, which meant the imperative nature of agricultural risks insurance and obligatory insurance in the form of mutual insurance (Jazwinski, 1980). This allowed the Russian government to cover the insurance of agricultural producers, to reduce the financial pressure on farmers, resulting in pre-revolutionary Russia becoming the largest country - manufacturer of grain.

At this time the minds of scientists are bordered by the question of necessity of creation of insurance protection of farmers by insuring the crops. For example, V. A. Targonsky is a pioneer of the idea of government support of crop insurance (Targonsky, 1892).

Another scientist of that time - A. V. Chayanov – substantiate the need for compulsory insurance of crops at the same time, the rejection of voluntary due to its inconsistency in ensuring insurance coverage of all areas of the country (Chayanov, 1993).

The Soviet period, PPP was marked by a state monopoly on insurance: on the one hand, the state acted in the face of Rosgosstrakh insurance on the other insurers (state farms, collective farms, household farms). In this era there was a single state policy aimed at incomless agricultural insurance. In this case, the maximum insurance covered all crops, animals, and property of farmers. Also a subsidy program for crop insurance of unprofitable enterprises was provided (Horns, 2000).

The transition from the Soviet era of the PPP in agricultural insurance to the modern period is marked by the de-monopolization of the economy, the transition from mandatory to voluntary insurance.

Thus, we can conclude that the form of PPP has stood the test of time, in which social, political and economic impulses of development depended on the specific historical stages characterized by different degrees of state regulation of the economy as a whole and of individual sectors of the economy, including agriculture and the conditions of its insurance (Orden, Zulauf, 2015).

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## **4. The modern development of public-private partnerships in the field of agricultural insurance in Russia: legislation and regulations**

In agriculture one of the tools of a PPP program is a program-goal approach, which implemented through the state program of development of agriculture and regulation of markets of agricultural products, raw materials and food for 2013-2020. The state performs organizational-economic function of the agro-industrial complex development, organizes and coordinates the development of the target state, departmental and regional programmes of innovative and investment projects, provides for the formation of innovation infrastructure, but not performing the functions of agribusiness (Akimova, Kochetkova, 2015). Modern Russian legislation regulating relations in the field of agricultural insurance, in its pure form does not have a specific form of PPP we can only talk about partial use of some elements of the Alliance of government and business on a single example, which currently is the Institute of the state support in the sphere of agricultural insurance (Nosov, Kotar ed. al., 2014).

The first step on the path to emergence of the specified Institute in the domestic legal system was the establishment in 2001 of the Federal Agency for state support of insurance in the field of agricultural production, the objectives of which were, including, organization of measures for state support of insurance in the field of agricultural production and the control over observance of the procedure and conditions of granting of means of the Federal budget for these purposes (2001).

10 years later a long-awaited Federal law No. 260-FL was adopted, which was dated 25.07.2011 «On the state support in sphere of agricultural insurance and on introducing amendments to the Federal law «About agriculture development» (hereinafter – FL on state) (2011), which establishes the legal framework of state support in the sphere of agricultural insurance with the insurance protection related to agricultural production of the property interests of agricultural producers.

Novelty for national legislation was the opportunity for agricultural producers to shift the burden of payment of insurance premiums for agricultural insurance contracts in the state. Subject to compliance with the insurance contract, the insurer, and the risks of insurance of the above act, the state guarantees the payment of 50% of the insurance premium for the insured address of insurance company.

In the first years of existence of the mentioned law, the trend towards insurance of agricultural risks among farmers has increased.

In subsequent implementation of this legislation showed that it is not devoid of several drawbacks which do not contribute to increase the demand for state support from farmers.

Thus, in accordance with paragraphs 13 and 14 of article 2 of the Federal law on state support (in the version dated 25.07.2011) provides that coverage under contracts of agricultural insurance, carried out with the state support is granted to the farmer, provided that the reduction in the actual harvest of crops compared to the planned harvest occurred thirty and more percent, and the yield reduction of perennial plants on forty percent or more of the insured area.

A high threshold for the occurrence of the insured event (the decrease in the yield on thirty percent or more) set by this law, shall entail insignificant insurance payments, which makes this mechanism of insurance almost unattractive for farmers.

Therefore, the legislator first in the end of 2014 reduced this threshold to 25% (for annual plants) and to 30% (perennial), and currently it is 20% for annual plants.

However, we have to admit that to the full PPP in the sphere of agricultural insurance in Russia today is not used: in the legislation there are no mechanisms guaranteeing the payment farmers insurance claims under contracts of agricultural insurance, carried out with the state support there is no system of compulsory agricultural insurance. The legislation also doesn't have the imperative of reinsurance by insurance companies of their risks, as well as liability insurers for unreasonable refusal to pay of insurance compensation, etc.

The solution to this problem is possible by creating the most acceptable for Russia, forms of PPPs in agricultural insurance taking into account positive international experience, as well as the historical preconditions of formation of the investigated Institute in the Russian legislation.

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## **5. Public-private partnerships in positive law in the USA**

The most effective use of the legal structure of PPP in Russia will contribute to the adaptation of existing Russian legislation regulating agricultural insurance principles and mechanisms determining the stability of its functioning in positive law of foreign countries, particularly the United States (Akkoyunlu, Kholodilin, Siliverstovs, 2012).

Like in Russia, in the US the main instrument of state support is the submission of grants for payment of insurance premiums, which allows minimizing the cost of insurance for farmers.

In the US there is a system of effective control by the state over the whole process of conclusion and execution of contracts of agricultural insurance, which allows making a conclusion on the adequacy of the maximum effects of government Institute for PPP in agricultural insurance.

US law in this area is public contained in separate articles of the laws of the United States (2016) governing the use of public lands, forests, water, rural infrastructure development (Graff, 2013; Stodder, Younessi, 2013).

One of the leading programs of agricultural insurance in the United States according to, in particular, the Law on protection of agriculture of 2000 (2000), Law on food, environment and energy of 2008 (2008) and others include the programs: - peril crop insurance (MPCI), revenue insurance management (IP), insurance index of the crop (GRP), and insurance income from the cultivation of culture (CRC), insurance income plan (GRIP) insurance income from cultivation of culture (CRC).

The Ministry of Agriculture approved by the insurance company enters into a Standard reinsurance agreement. Company data are responsible for all costs of the insured and guarantee the payment of the premium Federal Corporation that provides reinsurance of agricultural risks taken by companies, and pays compensation for administrative and operating expenses associated with the provision of insurance services. In addition, this corporation is authorized to establish rates of premiums, the size of the subsidies. While Federal insurance of crops is carried out only through private insurance companies, which are responsible for service insurers (farmers) and guarantee the payment of insurance indemnity (Naghshpour, 2012).

In addition, is established the risk management Agency in the United States, which oversees the activities of the said corporations, and also conducts quality control inspection services for insurance companies. If the error rate of the insurance company is below the normative values, it receives a reward, if it is above sanctions are applied.

The US government regulates terms and conditions of insurance, developing rates for all types of insurance crops that are subsequently sold by private companies.

Percentage of coverage in case of insured event occurrence varies depending on the insurance program chosen by the farmer, but may not be less than 80% - on the program of peril crop insurance (MPCI).

Thus, we can conclude that the Russian legislator by increasing the level of insurance coverage up to 80% loss of crops in FL «On state support», as described above, leads to the law of the Russian Federation to the existing world standards.

We hope that this is not the last Novelty of the current legislation of the Russian Federation in the field of law. Because Russian law in the sphere of state support of agricultural insurance should also be supplemented with rules on mandatory reinsurance to insurers of their risks, the establishment of the state system of control over the activities of insurers in this area, and to develop and implement the legal form of the PPP in agricultural insurance models which will be discussed below.

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## **6. Possible forms of use of legal structures of PPP in the field of insurance supervision of Russia**

Positive experience with PPP in the field of agricultural insurance in foreign countries, including the US, has led to the development of the draft Concept of improvement of agricultural insurance, carried out with the state support for the period up to 2020 (hereinafter – the Concept). The main result should be the increase in the number of agricultural producers covered by agricultural insurance, and the insured crop (planting) and perennial plantings.

We believe that achieving this goal is impossible without the creation of a centralized and streamlined system of governance of insurance processes in the field of insurance. In this regard, it is recommended to create the following legal forms of realization of public-private partnerships in the reviewed strategic industry in Russia:

1. The first option – the functioning of the PPP in the form of insurance of agrarian corporation with mixed capital of state funds and private insurers (Shcherbakov, 2011), which is based on co-insurance of agricultural risks on a single methodology, tariffs, common rules, common insurance policy. The farmers pay 50% of the total amount of accrued insurance premium to the insurance agri-corporation. The state contributes part of the cost of insurance there too. The state decides the issues of management and control of the efficient use of allocated budgetary funds, monitors the obligatory reinsurance of agricultural



risks in governmental organization, in the special account of which accumulates the agricultural insurance reserve funds which are used to stabilize the financial situation of farmers in case of lean years.

2. The second option – the establishment of state agricultural insurance company with 100% state capital (Shcherbakov, 2011), where all the issues related to agricultural insurance are dealt with solely by this company. Including: unification of the rules of crop insurance with state support contract of insurance, reinsurance and other matters; the definition of the agro-examination procedure; apportion of the reinsurance of agricultural risks in reinsurance pool (or reinsurance companies), etc.

3. The third option – creating in the sphere of agricultural insurance the mutual insurance companies, a model of which originated in the pre-revolutionary law of this country. The specificity of this legal model of using PPP in agricultural insurance is that the farmers are creating such a society to insure their property interests on a mutual basis by combining the mutual insurance society of the necessary funds with a prerequisite of reinsurance from the insurer, made particular by the state that is effectively used in the USA law.

The government subsidizes 50% of insurance premiums for each insurance contract, implemented with the state support; is the controlling authority over the mutual insurance companies; performs expertise of draft insurance contracts and their accompanying documents; adopts the decision on granting or refusal in performance of the grant; has the exclusive right to produce agricultural expertise in the negotiation and execution of contracts of agricultural insurance, carried out with state support. In the society of mutual insurance, a special insurance reserve is created, the spending of which is the decision of all the members of this society.

We believe, this collective version of the PPP embodied as a historically proven legal mechanisms for PPP projects in Russia, and contemporary legal approaches of the United States, allows, on the one hand, the maximum guarantee of the interests of farmers (members of society of mutual insurance) in case of occurrence of insured event under the contract of agricultural insurance, carried out with state support, and on the another – to provide agricultural security of the state, financing the premiums at the conclusion of such contract.

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## **7. Conclusions**

Thus, the main features and components of the concept of PPP are: institutional status; mutuality; regulation over national law; focus on the implementation of socially important projects and programs. Taking into account these characteristics as a definition of PPP in the sphere of agricultural insurance, we can offer this definition as a mutually beneficial relationship between the state represented by its competent authorities, on the one hand, economic private actors, on the other hand, are regulated by law and aimed at implementation of significant projects and programs in the field of agricultural insurance in order to ensure food security of the Russian Federation.

The study of the historical experience of effective use of PPP in agricultural insurance and the analysis of positive law that governs the mechanism of the PPP in agricultural insurance, allow us to conclude that some elements of the design are necessary for a modern agricultural insurance of the Russian Federation, carried out with state support.

Analysis of possible options for legal forms of PPP in the modern agricultural insurance has allowed identifying the most effective in modern conditions the PPP model, which is a symbiosis of historical PPP model, previously used in the Russian Empire, and some elements of PPP inherent to successfully apply the laws of the United States.

We believe, as such, should recognize the creation of mutual insurance societies on the basis of observance of interests of all participating parties of the insurance relationship and the most rational use of the insurance Fund, in case of its regulation both by members of the mutual insurance companies – that is by farmers and the state through its oversight function.



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