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### PLACE OF THE PUBLIC-PRIVATE PARTNERSHIP IN REGULATION OF ENTREPRENEURIAL ACTIVITY IN RUSSIA

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**Key Words: Public-Private Partnership, Agreement, Entrepreneurial Activity, Risk,  
Entrepreneur, Public Interest.**

#### **ANNOTATION**

The paper is devoted to the analysis of the public-private partnership in regulation of entrepreneurial activity in Russia. The primary attributes of the public-private partnership were analyzed and comparative and historical analysis was conducted.

**Objective** to determine the special features and prospects for development of the public-private partnership for the entrepreneurs.

**Research methods** the general scientific dialectic method of obtaining knowledge as well as supervening specific scientific methods were used: historical, sociological, logical, structured system-based, technical legal, comparative law method, and legal simulation method.

**Results** Public-law and private-law elements combine most brightly within the frameworks of the public-private partnership (PPP) which emphasizes the value of partnership for both regulation of national and public interests in general and entrepreneurial interests as parties of PPP.

**Conclusions** By virtue of the conducted research the conclusions were made that the entrepreneur investing in the projects of PPP shall be guaranteed a return of investments through redistribution of risks between a private and public partner thus ensuring high profitability of investment projects. PPP can develop only within the frameworks of the market economy since the interaction of the state and business is impossible without free development of entrepreneurial activity.

## INTRODUCTION

Public-private partnership (hereinafter PPP) holds a special place in the mechanism of legal regulation of entrepreneurial activity. A partnership is qualified as a factor of the socio-economic development of the country<sup>1</sup>, the foundation of the innovation economy<sup>2</sup>. At the present stage of the economy development it is required to shift to a new round based on the investment development where one of the directions is a targeted attraction of private investments on the principles of partnership which consists in implementation of joint activity of its participants to satisfy both common and own interests of the parties. Without attraction of private investments it is not always possible to settle state problems, particularly to establish social infrastructure<sup>3</sup>. Combination of private and public interests in law is increasingly implemented in the ideas of the public-private partnership upon fulfillment of entrepreneurial activity. The social function of the entrepreneurial activity is realized through the ideas of the public-private partnership when the economic entities fulfill obligations in the social sphere<sup>4</sup>.

Alongside with the legal term “state-private partnership” other notions are also used to denote the cooperation of the public and private partners: public-private partnership<sup>5</sup>, and private-public partnership<sup>6</sup>.

The history of the public-private partnership goes back to the ancient Rome. Originally, the PPP prototype was formed through the concession institute. As early as in ancient Rome the self-governing communities entered into concession agreements for transportation facilities, markets and washing houses<sup>7</sup>. In Russia concession has developed as well. Thus, in 1897-1901 within the frameworks of the concession agreement between Russia and China the Chinese Eastern Railway was built (CER)<sup>8</sup>. As a matter of interest, the concession institute was used in Russia during the early Soviet times as well.

<sup>1</sup> Ref. Antonova K.A. Gosudarstvenno-chastnoe partnerstvo kak faktor sotsialno-ekonomicheskogo razvitiya Rossii: avtoref. dis.kand. ekon. nauk [Public-private partnership as a factor of the socio-economic development of Russia: abstract of a thesis, PhD in Economy]. Moscow, 2012. 22 p. (p. 4).

<sup>2</sup> Ref. Emelyanov Yu.S. Gosudarstvenno-chastnoe partnerstvo v innovatsionnom razvitii ekonomiki Rossii: avtoref. dis.d-ra ekon. Nauk. [Public-private partnership in the innovation development of the Russian economy: abstract of a thesis, Doctor of Economy]. Moscow, 2012. 60 p. (p.5).

<sup>3</sup>Ref. for example the Concept for the Long-Term Socio-Economic development of the Russian Federation for the period till 2020 approved by the decree of the Government of the Russian Federation as of November 17, 2008 No. 1662-r. Collected Legislation of RF. 2008. No. 47. Art. 5489.

<sup>4</sup>Ref. for example Ayurova A.A. Sotsialnaya otvetstvennost biznesa – ponyatie i svyaz s pravom. Pravo i sotsialnoe razvitie: novaya gumanisticheskaya ierarhiya tsennostey [Social responsibility of a business sector - notion and connection with the law. Law and social development: new humanistic hierarchy of values]. Edited by Gabov A.V., Putilo N.V. Moscow, Institut zakonodatelstva i sravnitel'nogo pravovedeniya pri Pravitelstve RF: INFRA- Moscow, 2015. 272 p. (pp. 68-71).

<sup>5</sup> Modelnyy zakon «O publichno-chastnom partnerstve» MPA SNG [Model Law “Concerning the Public-Private Partnership” of IPA CIS]. Available at: [http://iacis.ru/upload/iblock/18e/prilozhenie\\_k\\_postanovleniyu\\_9.pdf](http://iacis.ru/upload/iblock/18e/prilozhenie_k_postanovleniyu_9.pdf); Popondopulo V.F. Publichno-chastnoe partnerstvo: ponyatie i pravovye formy [Public-private partnership: notion and legal forms]. Arbitrazhnye spory, 2014, No. 2, pp. 81-100. (p.81).

<sup>6</sup>For example, clause 7 of the Concept for the Long-Term Socio-Economic Development of the Russian Federation for the period till 2020 approved by the decree of the Government of the Russian Federation as of November 17, 2008 No. 1662-r. Collected Legislation of RF. 2008, No. 47. Art. 5489. In Great Britain Public & Private Partnerships – (PPP): Kappeler A. and Nemoz M. Public-Private Partnerships in Europe – Before and During the Recent Financial Crisis // Economic and Financial Report, EFR. 2010. №4 [http://www.eib.org/attachments/efs/efr\\_2010\\_v04\\_en.pdf](http://www.eib.org/attachments/efs/efr_2010_v04_en.pdf)

<sup>7</sup> Ref: Osborne S. Public-Private Partnerships: Theory and Practice in International Perspective. Routledge, 2000. P.37; Tatarkin A.I., Romanova O.A., Lavrikova Yu.G. Teoreticheskie osnovy gosudarstvenno-chastnogo partnerstva [Theoretical foundations of the public-private partnership]. Biznes, menedzhment i pravo, 2009, No. 1, pp. 19-24. (p.19).

<sup>8</sup> Praktika primeneniya kontsessionnykh soglasheniy dlya razvitiya regionalnoy infrastruktury v Rossiyskoy Federatsii [Practice of using concession agreements for the development of regional infrastructure in the Russian Federation] edited by Seleznyov P.L. Moscow, Tsentr razvitiya gosudarstvenno-chastnogo partnerstva Publ., 2014. p. 4.

Specifically, the Council of People's Commissars of the Russian Soviet Federated Socialistic Republic (RSFSR) issued a Decree "General Economic and Legal Terms of Concessions" on November 23, 1920 which specified the objectives and terms of entering into concession agreements among which were the provision of concessionaire with trade advantages in case of application of specific technical improvements on a large scale, provision of extended period of concession to ensure full compensation to the concessionaire for taking a risk and technical facilities invested in concession. Therewith the property of the concessionaire invested in the enterprise shall not be subjected to either nationalization, or forfeiture, or seizure<sup>9</sup>. The necessity to recover the production forces of Russia preconditioned the concession introduction in early 20s of the XX century, since such recovery can be accelerated manifold through attraction of foreign government and public institutions, private enterprises, joint-stock companies, cooperatives and organizations of other states to production and processing of natural wealth of Russia (paragraph 2 of the Decree "General Economic and Legal Terms of Concessions") and was even instrumental in the establishment of the Main Concession Committee at the Council of People's Commissars in 1923 within the frameworks of the industrialization taking place which existed till 1937<sup>10</sup>.

However, the development of partnership relations specifically on the basis of PPP institute started globally only after the Second World War when constructive cooperation of the state with entrepreneurs began with the purpose of execution of social projects. The term "public-private partnership" as such appeared in the United States of America and originally denoted joint private and public funding of the educational programmes. Subsequently in the 1950s it started to be used pertaining to the joint funding of the communal facilities<sup>11</sup>. The PPP institute was most developed in the Great Britain where the Private Finance Initiative - PFI programme<sup>12</sup> was adopted. The PFI programme is implemented within the frameworks of the Concept for the Public & Private Partnerships - PPP, implying joint execution of projects<sup>13</sup>. According to the estimates of the Organization for Economic Cooperation and Development (OECD) the partnership forms of relations of the state and private sector in the area of public property management enable the Great Britain to save 15-20% of the government expenditures<sup>14</sup>. Most often the industrial priorities of a partnership in the world are developed in favour of the automotive sphere (USA)<sup>15</sup>, education (Germany, Great Britain) and health

<sup>9</sup>Internet arkhiv zakonodatelstva SSSR (Internet repository of the USSR legislation). Available at: [http://www.libussr.ru/doc\\_ussr/ussr\\_777.htm](http://www.libussr.ru/doc_ussr/ussr_777.htm) (accessed August 23, 2017).

<sup>10</sup>Khromov S.S. Inostrannye kontsessii v SSSR. Istoricheskiy ocherk. Dokumenty. [Foreign concessions in USSR. Historical sketch. Documents.]. Moscow, Institut Rossiyskoy Istorii RAN Publ., 2006. 384 p. (p.28).

<sup>11</sup>Yescombe E.P. Gosudarstvenno-chastnoe partnerstvo: Osnovnye printsipy finansirovaniya [Public-Private Partnership: Primary Principles of Financing]. Moscow, Alpina Publisher, 2015. pp. 22-23.

<sup>12</sup>Private Finance Initiative – its rationale and accounting treatment. Available at: <http://www.parliament.uk/documents/upload/0807pfi.pdf> (accessed August 26, 2017). Available at:

<sup>13</sup>Rossiyskiy delovoy portal «Alyans Media»(Russian business portal Alyans Media) [http://businesspress.ru/newspaper/article\\_mfd\\_1101\\_afd\\_46432.html](http://businesspress.ru/newspaper/article_mfd_1101_afd_46432.html) (accessed August 21, 2017)

<sup>14</sup>Ref. Likhachev N.A. Zarubezhnyy opyt chastno-gosudarstvennogo partnerstva i problemy ego adaptatsii v RF [International experience of private-public partnership and problems of adaptation thereof in RF]. Sotsialno-ekonomicheskie yavleniya i protsessy, 2011, No. 5-6, pp. 138-145, (p.139).

<sup>15</sup>Sidney Scot Public Private Partnerships and America's Infrastructure Strategy // Public Private Partnerships 2012. №7 <https://www.hillint.com/PDFs/CAR-Edition7-Public%20Private%20Partnerships.pdf> (accessed August 26, 2017)

care (Italy, Canada, France)<sup>16</sup>. Herewith, the priority branch for investments with the help of PPP depends on the socio-economic level of development of the country and government policy.

The need for introduction of PPP in the present-day Russia is associated with the development of market economy. Nevertheless there was no specific law in Russia regulating PPP up to 2015. However regulatory legal acts were adopted in this sphere at a regional level. The first regional laws in 2006 were the Law of Tomsk oblast No. 244-OZ “Concerning the Fundamentals of the Public-Private Partnership in Tomsk Oblast” dated October 16, 2006<sup>17</sup>, and the Law of St. Petersburg “On Participation of St. Petersburg in the Public-Private Partnerships” No. 627-100 (in effect until present) dated December 25, 2006<sup>18</sup>. Notably the legislation in the area of PPP regulation changed already twice in Tomsk oblast: first by the Law of Tomsk oblast No. 240-OZ “Concerning the Public-Private Partnership in Tomsk Oblast” dated December 4, 2008<sup>19</sup>, and afterwards by the Law of Tomsk oblast No. 234-OZ dated December 17, 2012<sup>20</sup>.

After adoption of the Federal Law No. 224-FZ (edited as of July 3, 2016) “Concerning the Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and Introduction of Amendments to Certain Legislative Acts of the Russian Federation” dated July 13, 2015<sup>21</sup> (hereinafter Law on PPP) in the majority of RF subjects the regional legislation was adjusted in accordance with the Federal Law by way of adoption of new laws or abolition thereof. Adoption of the Law on PPP enabled to introduce unified terminology, and overcome difficulties associated with incoherent development of the legislation in regions and municipal units. Also the Law on PPP stipulates the principles of the public-private partnership which establishes common direction for development of the regional rule-making in the sphere of PPP.

### *Methodological Framework*

Public-private partnership can be considered as one of the directions of the economy modernization<sup>22</sup>. The essence of the public-private partnership consists in the engagement of the private sector by the authorities on a contractual basis for the efficient fulfillment of objectives of public units on the basis of compensation of expenses to the representatives of private sector, risk sharing between the partners, and clear distribution of powers upon

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<sup>16</sup> Kuznetsov I.V. Zarubezhnyy opyt gosudarstvenno-chastnogo partnerstva (SShA, Yevropa, Kanada) [Foreign experience of the public-private partnership (USA, Europe, Canada). *Mirovaya ekonomika i mezhdunarodnye ekonomicheskie otnosheniya*, 2012, No. 8 (93) pp196-201, (p.196).

<sup>17</sup> Elektronnyy fond pravovoy i normativno-tekhnicheskoy dokumentatsii (Electronic repository of legal and regulatory technical documentation). Available at: <http://docs.cntd.ru/document/951817259> (accessed August 26, 2017)

<sup>18</sup> Peterburgskiy fond pravovoy portal (St. Petersburg legal portal). Available at: <http://ppt.ru/newstext.phtml?id=16486> (accessed August 24, 2017)

<sup>19</sup> Elektronnyy fond pravovoy i normativno-tekhnicheskoy dokumentatsii (Electronic repository of legal and regulatory technical documentation) Available at: <http://docs.cntd.ru/document/951826531> (accessed August 26, 2017)

<sup>20</sup> Elektronnyy fond pravovoy i normativno-tekhnicheskoy dokumentatsii (Electronic repository of legal and regulatory technical documentation) Available at: <http://docs.cntd.ru/document/951855423> (accessed August 26, 2017)

<sup>21</sup> *Sobranie zakonodatelstva RF* [Collected Legislation of RF]. 2015, No. 29 (part I). Art. 4350.

<sup>22</sup> Ref. Gubin E.P. Modernizatsiya rossiyskoy ekonomiki i sovershenstvovanie grazhdanskogo zakonodatelstva [Modernization of the Russian economy and civil legislation improvement] *Izvestiya Yugo-zapadnogo gosudarstvennogo universiteta. Istoriya i pravo*. 2011, No. 2, pp. 31-37. (p. 36).

execution of joint activity. According to the representatives of economics, there are two most significant economic systems – the state and private sector (represented by transnational corporations) which not only compete for the economic influence but are also meant to cooperate more closely for the benefit of improving the ultimate performance<sup>23</sup>.

## RESULTS

It is important to note the framework nature of the Federal Law, therefore the lack of the regional and municipal basis of PPP can have a negative impact on further partnership projects, since partnerships are highly location-specific and of public significance specifically for regions and it is local legislation that can take into account the specific nature of each region.

Public-law and private-law elements combine most brightly within the frameworks of PPP which emphasizes the value of partnership for both regulation of national and public interests in general and entrepreneurial interests as parties of PPP.

First and utmost PPP is cooperation of public and private partners. The word “cooperation” itself is more characteristic of the sectors of public law. According to a general rule a private partner shall be selected on a competitive basis. Exceptions can be stipulated only by Law. The absence of a competition in itself contradicts in our view the essence of cooperation, since public functions shall be implemented only by the private partner that can provide sufficient conditions for execution of public projects.

Cooperation makes the core of partnership relations and shall be based on equal rights of the parties, public and private partners. Consequently the partnership forms new management mechanisms.

A wide range of structures was created for the purposes of cooperation of the partners both before and in the course of PPP projects execution. As a matter of fact the public partner (state and municipal authorities) alongside with the partnership participant acts also as its regulator. Moreover, for the purposes of regulating the interrelations of participants special structures and bodies are created within the framework of a partnership that assist in partnership realization.

As an issue of concern with respect to PPP projects execution a number of authors name inefficient work of the existing institutes which provokes corruption and impedes the process of interaction of the representatives of private sector and government authorities<sup>24</sup>. We consider that these issues shall be settled by an autonomous regulatory authority.

The Bank for Development - a State Corporation "The Bank for Development and Foreign Economic Affairs (Vnesheconombank)" (hereinafter -

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<sup>23</sup>Ref. Tatarin A.I., Romanova O.A., Lavrikova Yu.G. Teoreticheskie osnovy gosudarstvenno-chastnogo partnerstva [Theoretical foundations of the public-private partnership]. *Biznes, menedzhment i pravo*, 2009, No. 1, pp. 19-24. (p.20).

<sup>24</sup>Leshchenko O.A. O sozdaniy usloviy dlya razvitiya gosudarstvenno-chastnogo partnerstva v Rossii [On creation of conditions for the development of the public-private partnership in Russia]. *Problemnyy analiz i gosudarstvenno-upravlencheskoe proektirovanie*. 2013, No. 5(31), V.6, pp. 12-24, (p.13).

Vnesheconombank) plays a special role in PPP functioning at the present stage. It is entrusted with functions on execution of investment projects of national significance and implemented under the terms of a public-private partnership<sup>25</sup>, wherefore the Centre of Public-Private Partnership was established as part of Vnesheconombank.

It should be noted that special government authorities for partnership regulation are also stipulated in a number of laws of CIS countries: in the Republic of Kazakhstan the activity of the Centre for Development of the Public-Private Partnership is envisaged. The Centre fulfills the functions on conducting research and generating recommendations on the issues of the public-private partnership; assessing implementation of the public-private partnership projects; making a list of the public-private partnership projects intended for execution<sup>26</sup>, the Council for the Public-Private Partnership<sup>27</sup> is being established in the Republic of Tajikistan.

As far as the objective of the Law on PPP as per the Art. 1 is creation of legal conditions for attraction of investments in the RF economy and improvement of quality of goods, works and services, the arrangement of consumers' provision with which refers to the jurisdiction of the government authorities and local self-government, the real cooperation of the private and public parties is a required condition to achieve the objective.

Realization of any form of PPP is possible only on condition of its financial attractiveness and additional guarantees for a private partner and not only at the time of the project execution but during participation in creation thereof as well.

For instance, in accordance with the Art. 6 of the Law of the Republic of Moldova No. 179-XVI (edited as of March 19, 2015) "Concerning the Private-Public Partnership"<sup>28</sup> dated July 10, 2008 a principle of proportionality is in effect to protect the interests of the partners. According to the principle more specifically in case of violation of obligations undertaken within the frameworks of the private-public partnership by the public partner on a unilateral basis, the private partner is entitled to claim inflicted damage including lost profits. The damage caused to the private partner shall be compensated from the budget of the public partner.

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<sup>25</sup> Sm. pp.1 p.3 st.3 Federalnyy zakon ot 17.05.2007 N 82-FZ (red. ot 03.07.2016) «O banke razvitiya». Sobranie zakonodatelstva RF. (Ref. sub-clause 1, clause 3, Art. 3, Federal Law No. 82-FZ (edited as of July 3, 2016) "On the Bank for Development" dated May 17, 2007. Collected legislation of the RF). 2007, No. 22. Art. 2562.

<sup>26</sup> Sm. st. 26 Zakona Respubliki Kazakhstan ot 31 oktyabrya 2015 goda № 379-V «O gosudarstvenno-chastnom partnerstve» (s izmeneniyami ot 08.04.2016 g.) // Informatsionnaya sistema «PARAGRAF». (Ref. Art. 26 of the Law of the Republic of Kazakhstan No. 379-V "Concerning Public-Private Partnership" (as amended on April 8, 2016) dated October 31, 2015. Information system "Paragraph". Available at: [http://online.zakon.kz/Document/?doc\\_id=37704720&doc\\_id2=37704720#pos=12:4&pos2=203;-8](http://online.zakon.kz/Document/?doc_id=37704720&doc_id2=37704720#pos=12:4&pos2=203;-8) (Accessed August 26, 2017).

<sup>27</sup> Sm. st.5 Zakon Respubliki Tadzhikistan ot 28 dekabrya 2012 goda №907 "O gosudarstvenno-chastnom partnerstve" // Baza dannykh "Zakonodatelstvo stran SNG" SOYUZPRAVOINFORM (Ref. Art.5 of the Law of the Republic of Tajikistan No. 907 "Concerning Public-Private Partnership" dated December 28, 2012. Data base "Legislation of the CIS countries SOYUZPRAVOINFORM). Available at: [http://base.spininform.ru/show\\_doc.fwx?rgn=57821](http://base.spininform.ru/show_doc.fwx?rgn=57821) (Accessed August 26, 2017).

<sup>28</sup> Baza dannykh "Zakonodatelstvo stran SNG" SOYUZPRAVOINFORM (Data base "Legislation of the CIS countries SOYUZPRAVOINFORM) Available at: [http://base.spininform.ru/show\\_doc.fwx?Rgn=24266](http://base.spininform.ru/show_doc.fwx?Rgn=24266) (Accessed August 25, 2017).

The Law of Kyrgyz Republic No. 7 (edited as of June 22, 2016) "Concerning the Public-Private Partnership in Kyrgyz Republic"<sup>29</sup> dated February 22, 2012 stipulates the establishment of special foundations meant to ensure the performance of the PPP obligations by a public partner. Also the specified Law stipulates the measures of the state financing (Art. 12) and economic backing (Art. 13) of a private partner.

Equitable distribution of risks between PPP participants also can raise the attractiveness of partnership, first of all for entrepreneurs. It is especially important with respect to the PPP agreement, since conclusion of such agreements is not exercised in Russia despite entry into force of the Law on PPP back in 2015. For instance, not a single project is implemented in Novosibirsk oblast in form of the partnership agreement. In our view, the primary reason of unpopularity of such form of PPP is the lack of clear direction for the procedure of distribution of risks in the Law on PPP. Thus, according to Art. 8 of the Law on PPP when elaborating proposals for the project execution the description of risks associated with the project execution is envisaged. When considering the project in terms of its comparative advantage, the scope of obligations undertaken by a public partner in case of risks occurrence upon execution of a project of public-private partnership is evaluated among other things (Art. 9 of the law on PPP). Naturally, description of potential risks in the Law in itself is insufficient for the further leveling thereof, however in such conditions a private partner is deprived of certain guarantees associated with the efficiency of participation in partnership relations.

Commercial risks associated with the possibility of return of investments made during exploitation of the object of agreement are most significant for a private partner. Such risk can be reduced through introduction of concessionaire payment stipulated by Art. 7 of the Law on Concession Agreements: the concession agreement stipulates a payment to be made by a concessionaire to concession grantor during the period of use (exploitation) of the object of concession agreement. Concessional payment can be stipulated both during the whole period of use (exploitation) of the object of the concession agreement and during certain periods of use (exploitation). The amount of concessional payment, form, procedure and time are established by the concession agreement in accordance with the decision concerning the conclusion of a concession agreement. Herewith, in order to reduce risks of a private partner upon entering into concession agreements, on February 1, 2015<sup>30</sup> in Art. 20 of the Law on Concession Agreements the amendments were made as per which in case of growth of legal risks if they cause an increase in the total tax burden on the concessionaire or aggravation of the concessionaire situation to the extent that the concessionaire loses to a considerable degree that he was entitled to reckon on when entering into concession agreement,

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<sup>29</sup> Tsentralizovanny bank dannykh pravovoy informatsii Ministerstva Yustitsii Kyrgyzskoy Respubliki (Centralized data bank of legal information of the Ministry of Justice of the Kyrgyz Republic) Available at: <http://cbd.minjust.gov.kg/act/view/ru-ru/203607> (Accessed August 23, 2017).

<sup>30</sup> Federalny zakon ot 21.07.2014 № 265-FZ (red. ot 03.07.2016) «O vnesenii izmeneniy v Federalny zakon "O kontsessionnykh soglasheniyakh" i otdelnye zakonodatelnye akty Rossiyskoy Federatsii» // Sobranie zakonodatelstva RF [Federal Law No. 265-FZ (edited as of July 3, 2016) "Concerning Amendments in the Federal Law "On Concession Agreements" and Certain Legislative Acts of the Russian Federation" dated July 21, 2014. Collected Legislation of RF]. 2014. No. 30 (part I). Art. 4266.

and among other things establish the mode of prohibitions and restrictions pertaining to the concessionaire aggravating his situation as compared to the mode that was in effect in accordance with the regulatory legal acts of the Russian Federation, subjects of the Russian Federation and local self-government bodies, the concession grantor is obliged to take measures ensuring the return on investments of the concessionaire and receipt of gross revenue (income from sales of manufactured goods, performance of work, rendering of services at the adjusted prices (rates) in the amount as large as the amount initially specified by the concession agreement. By way of the measures ensuring the return on investments of the concessionaire and receipt of gross revenue (income from sales of manufactured goods, performance of work, rendering of services at the adjusted price (rates) in the amount as large as the amount initially specified by the concession agreement, the concession grantor is entitled to increase the amount of payment of the concession grantor as per the concession agreement, duration of the concession agreement with consent of the concessionaire, the amount of expenses incurred by the concession grantor for creation and(or) reconstruction of the object of concession agreement, as well as to provide the concessionaire with additional state or municipal guarantees.

The determining attribute of PPP is also pooling of resources. The resources themselves represent a multiple-meaning notion. It is reserves of something including natural, economical, labour, or a means referred to when necessary. The public partner provides the private partner with the object of agreement for use (Art. 7 contains an exhaustive list of such objects). According to clause 2 of the Art. 6 of the Law on PPP the compulsory elements of the agreement are construction and(or) reconstruction of the object of agreement by a private partner; full or partial financing of creation of the object of agreement by a private partner. Herewith the financing of creation of the object of agreement, its exploitation and(or) maintenance from the budgets of the budgetary system of the Russian Federation shall be realized solely on account of subsidies from the budgets of the budgetary system of the Russian Federation in accordance with the budget legislation of the Russian Federation.

## DISCUSSIONS

Legislation with respect to partnership of some post-Soviet countries includes services alongside with property among partnership objects. Thus, the Law of Moldova No. 179-XVI (edited as of March 19, 2015) "Concerning the Private-Public Partnership" dated July 10, 2008<sup>31</sup> specifies that an object of a private-public partnership can be any property, works, public services, or any activity performed by a public partner with the exception of those forbidden by express law (Art. 17). The Art. 2 of the Model Law "Concerning the Public-Private Partnership" of IPA CIS<sup>32</sup> refers also work results and rendering of services to the objects of partnership.

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<sup>31</sup> Baza danykh "Zakonodatelstvo stran SNG" SOYUZPRAVOINFORM (Data base "Legislation of the CIS countries SOYUZPRAVOINFORM) Available at: [http://base.spinform.ru/show\\_doc.fwx?Rgn=24266](http://base.spinform.ru/show_doc.fwx?Rgn=24266) (Accessed August 24, 2017).

<sup>32</sup> Modelnyy zakon «O publichno-chastnom partnerstve» MPA SNG [Model Law "Concerning the Public-Private Partnership" of IPA CIS] Available at: [http://iacis.ru/upload/iblock/18e/prilozhenie\\_k\\_postanovleniyu\\_9.pdf](http://iacis.ru/upload/iblock/18e/prilozhenie_k_postanovleniyu_9.pdf).



Since the Law on PPP of RF regulates the issues of cooperation of private and public partners only pertaining to one of the possible forms, it can be considered that exclusion of public services from the objects of partnership refers specifically to such form of partnership as an agreement on PPP. At the same time other forms of PPP provide a possibility of using service as an object of cooperation, particularly the outsourcing. Shaidurov S.A. regards that the public-private partnership is the primary form of outsourcing in the area of rendering of state and municipal services<sup>33</sup>.

The issue of the exhaustive list of partnership objects is a matter of discussions. Therefore the proposal that the rule-making load with respect to determining the list of objects of PPP agreement could have been transferred to the level of sub-legislative rule-making is logical enough<sup>34</sup>.

Cooperation of the PPP participants shall be based on the principle of equitable distribution of risks and obligations between the parties of an agreement. Synergetic potential of a partnership manifests itself as a result of undertaking those functions by each of the partner that it can perform in the best way. Thus, the proposal for the PPP project execution shall contain description of risks associated with the project execution. Herewith, according to the clause 4 of the Art. 9 of the Law, the comparative advantage of the project shall be determined on the basis of a number of indicators including the scope of obligations undertaken by a public partner in case of risks occurrence upon execution of a project of public-private partnership, project of municipal-private partnership and the scope of obligations undertaken by such public-law entity upon execution of a state contract and municipal contract.

Also a private partner is protected from potential unfavourable changes in legislation according to clause 5 of the Art. 15 of the Law on PPP in case if during the period of an agreement in the legislation of the Russian Federation, regulatory legal acts of the subjects of the Russian Federation, and municipal legal acts amendments were made and came into effect causing an increase in the total tax burden on the private partner or aggravation of the situation of the private partner, establishing among other things the mode of prohibitions and restrictions pertaining to the private partner aggravating his situation as compared to the situation before specified amendments came into effect to the extent that he loses that he was entitled to reckon on when entering into agreement. In such case the public partner is obliged to take measures ensuring return on investments of the private partner and receipt of gross revenue (income from sales of manufactured goods, performance of work, and rendering of services at the adjusted prices (rates) in the amount as large as the amount initially specified in the agreement.

## CONCLUSION

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<sup>33</sup> Ref. Shaidurov S.A. Outsourcing v sfere okazaniya gosudarstvennykh i munitsipalnykh uslug. Avtoref. Dis. Kand. Yurid. nauk. [Outsourcing in the area of rendering of state and municipal services. Thesis abstract of the PhD in Law]. Moscow, 2017. 29 p. (p.21).

<sup>34</sup>Gorodnova N.V., Shablova E.G., Berezin A.E. Razvitie ekonomiko-pravovykh osnov instituta gosudarstvenno-chastnogo partnerstva v Rossii [Development of the economic and legal foundations of the institute of public-private partnership in Russia. International scientific and practical conference world science. 2016. No. 1(5). pp. 23-25, (p.24).

In general, the potential risks shall be envisaged in the PPP agreement which having a legal nature of the contract as any agreement<sup>35</sup> can contain additional terms and conditions concerning the peculiarities of distribution of risks between the parties. Naturally, taking into account that one of the parties of such agreement is a public entity that can apply administrative resources as well, in the long run this circumstance can have a negative impact on the actual possibility of reaching an agreement on distribution of risks between the partners. Therefore the Law on PPP should stipulate other risks associated with participating in a partnership as well.

The legislation of a number of CIS countries also stipulates distribution of risks based on agreement. Thus, according to the Art. 14 of the Law of the Republic of Kazakhstan No. 379-V “Concerning the Public-Private Partnership” (as amended on April 8, 2016) dated October 31, 2015<sup>36</sup> distribution of risks between a public partner and private partner as well as measures required to reduce the probability of occurrence thereof and elimination of consequences of the risks occurred shall be established in the agreement of the public-private partnership.

The entrepreneur investing in the PPP projects shall be guaranteed a return of investments through redistribution of risks between a private and public partner thus ensuring high profitability of investment projects. On the whole, risk minimization of the entrepreneur within the frameworks of PPP enables to obtain the guaranteed profit for further development of the entrepreneurial activity including the use of capital-intensive innovation technologies. In the long run, the partnership enables to ensure the economic development at a higher level and thereby to implement the objectives of the subsequent sustainable economic development. The potential risks shall be envisaged in the PPP agreement which having a legal nature of a contract as any agreement can contain additional terms and conditions concerning the peculiarities of distribution of risks between the parties.

In such a manner, PPP can develop only within the frameworks of the market economy since the interaction of the state and business is impossible without free development of entrepreneurial activity. Legal framework of PPP is established in the Art. 34 of the Constitution of the Russian Federation which declares that everyone is entitled to a free use of one’s capabilities and property for the entrepreneurial and other economic activity which is not prohibited by law. Taking into account the development of social functions of the state in the recent years in Russia, the use of PPP mechanism shall be instrumental both in further development of these social functions and growth of the social function of entrepreneurship itself. All together shall serve the goal of strengthening stability of the civil society in Russia.

## RECOMMENDATIONS

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<sup>35</sup> John E. Osborn THE ROLE OF PUBLIC PRIVATE PARTNERSHIPS IN REBUILDING AMERICA’S INFRASTRUCTURE // Public Private Partnerships 2012. №7 <https://www.hillintl.com/PDFs/CAR-Edition7-Public%20Private%20Partnerships.pdf>

<sup>36</sup> Информационная система «ПАРАГРАФ» (Information system “PARAGRAPH”) Available at: [http://online.zakon.kz/Document/?doc\\_id=37704720&doc\\_id2=37704720#pos=12;4&pos2=203;-8](http://online.zakon.kz/Document/?doc_id=37704720&doc_id2=37704720#pos=12;4&pos2=203;-8) (Accessed August 22, 2017).

The materials of the present paper are valuable both for students studying legal aspects of the public-private partnership and for practitioners participating in elaboration and acceptance of the partnership projects.

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