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Legislative Mode and Framework of Policy Agricultural Insurance

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Abstract This paper introduces existing legislative mode of policy agricultural insurance in China, summarizes 5 experimental schemes of policy agricultural insurance in China, and discusses the legislative framework and the selection of legislative mode of policy agricultural insurance in China.

Key words Policy agricultural insurance; Legislative mode; Legislative framework; National support in China

Currently, China is carrying out legislative work on policy agricultural insurance. But before planning and designing the new system, the existing legislative modes need to be researched and analyzed. Based on this, we can reasonably design a legislative mode suitable for the situation of China in order to make the framework content of system more clear. Countries already establishing and implementing policy agricultural insurance have different types of policy agricultural insurance. And their experiences are worth learning. At present, China is starting a new round of experiment in agricultural insurance. And different regions have constituted experimental schemes with distinct local characteristics. Legal analysis on these schemes can help to find available system "raw material" for legislation in the future.

Theoretically, policy agricultural insurance mainly includes two sub-systems, which are the agricultural insurance organization operating system and the agricultural insurance national (government) support system^[1]. And this paper conducts researches from the aspects of agricultural insurance organization and agricultural insurance national (government) support.

1 Legislative mode of the existing policy agricultural insurance

There exist four different types of legislative modes in the world.

1.1 Nationalization mode based on government auspices It has the following main characteristics: legislation has regulated the government (including local government), relevant functional departments, state-owned agricultural insurance company, insured agricultural producers and other legal subjects, as well as their rights (powers) and obligations; government assumes all the responsibility for implementing agricultural insurance scheme, and provides financial support including cost subsidies; it sets up state-owned agricultural insurance enterprises specialized in agricultural insurance business, and gives them tax incentives; private insurance companies do not participate in agricultural in-

surance business; developed countries allow agricultural producers to voluntarily participate in the insurance, while developing countries mostly implement mandatory insurance; agricultural producers establish a contractual relationship together with state-owned enterprises and bear part of the premium. This legislative mode is widely used in Canada, Philippines, Greece, Soviet Union and so on. The United States adopted this mode before the year 1980; and the *Agricultural Insurance Regulation* constituted by Chile at July, 1970 also belongs to this legislative mode.

1.2 Commercial mode based on government support Under this mode, laws can regulate government (including local government), relevant functional departments, commercial insurance companies, producers and other participation subjects, as well as their rights (powers) and obligations. Commercial insurance companies provide agricultural insurance services for agricultural producers; government offers financial support including cost subsidies; producers bear part of the premium; agriculture, finance and other government departments are responsible for the regulation. India, Italy, Portugal and other countries are typical examples of this mode^[2].

1.3 Mixed mode of nationalization and commercialization based on government support It has the following main characteristics: legislation has regulated the government (including local government), relevant functional departments, state-owned agricultural insurance enterprises, private insurance companies, insured agricultural producers and other legal subjects, as well as their rights (powers) and obligations. It also sets up agricultural insurance or reinsurance business in state-owned agricultural insurance enterprises, and gives them tax incentives. Private insurance companies can participate in the operation of agricultural insurance in accordance with the agricultural insurance laws, transfer portions of risk portfolio modes to state-owned agricultural insurance enterprises, and obtain financial subsidies; government offers financial support including cost subsidies; producers bear part of the premium; agriculture, finance and other government departments are responsible for the regulation. This mode is applied in Spain and Mexico, as well as the United States from the year 1981. Brazil

used to adopt this legislative mode for a very long period of time.

1.4 Mutual cooperative mode based on government support This mode has the following characteristics: laws can regulate government (including local government), relevant functional departments, cooperative insurance organizations, agricultural producers and other legal subjects, as well as their rights (powers) and obligations; cooperative insurance organizations at different levels are established; producers can participate in cooperative insurance organizations; grass-roots cooperative organizations directly offer producers mutual cooperative insurance; the cooperative union can provide reinsurance services to the lower organizations; both compulsory and voluntary insurance are adopted; government offers financial support including subsidies and reinsurance; certain tax incentives are given to the cooperative insurance organizations; relevant government departments are responsible for regulation. Of all the countries in the world, Japan is a typical example of this mode. Korea and France can also be classified into this mode^[3].

These four modes mentioned above have their own characteristics and advantages. Countries can reasonably choose a legislative mode suitable for themselves according to their own situations.

2 Legal induction about the pilot schemes for policy agricultural insurance in China

At the end of 2003, China Insurance Regulatory Commission jointly with the relevant departments formulated the *Preliminary Scheme for Establishing Agricultural Insurance System*. Five development modes were put forward according to the actual situation of agricultural insurance in China. Local governments implemented pilot schemes for different policy agricultural insurances. At the same time, Ministry of Finance also formulated the relevant normative documents with financial support. At present, China is at a preliminary exploratory phase of policy agricultural insurance. Therefore, there are local pilot schemes with different contents. In the long run, it is necessary to confirm, regulate and adjust all the schemes by law, which contain the relationship between obligations and rights of different legal subjects, and might provide future legislation with institution elements. And this paper summarizes the above schemes from legal perspective.

2.1 Shanghai mode Its main bodies include Shanghai Municipal Government and governments at district and county level, China Insurance Regulatory Commission, Shanghai Agriculture Commission, the Finance Bureau at all levels, Agricultural Insurance Promotion Committee of districts and counties, agricultural machinery service extension centers at county level and other insurance sale units, Shanghai Anxin Agricultural Insurance Co., Ltd., and agricultural producers. Under this mode, Shanghai Municipal Government undertakes major responsibility for organizing and promoting the development of agricultural insurance. Shanghai Anxin Agricultural Insurance Co., Ltd., the legal person according to the *Company Law*, operates the agricultural insurance. Among them, insurance business of

planting and breeding industries can benefit from the support of relevant policies. The company also conducts commercial operation for agriculture-related property insurance and liability insurance, short-term personal accident insurance and health insurance of rural residents. Premium income of farming and breeding industry shall not be less than 60 percent of the total premium income of the company. Financial departments give premium subsidies to agricultural producers whose planting and breeding are in accord with the developmental orientation of agricultural industry in Shanghai. In addition, agricultural producers buy insurance policy voluntarily and bear part of the premium. Agricultural machinery service extension centers in districts or counties are among the agents of insurance company. China Insurance Regulatory Commission carries out the regulation. Due to the policy restriction of business scope of Shanghai Anxin Agricultural Insurance Co., Ltd., this mode can come down to a semi-commercial mode based on government support.

2.2 Heilongjiang reclamation area mode Its main bodies include Heilongjiang Agricultural Reclamation Bureau, Sunlight Agricultural Mutual Insurance Company, China Insurance Regulatory Commission, Ministry of Agriculture, Ministry of Finance and agricultural producers. Heilongjiang Agricultural Reclamation Bureau organizes agricultural insurance; agricultural producers in this reclamation area are members of the Sunlight Agricultural Mutual Insurance Company; agricultural insurance is offered by the Sunlight Agricultural Mutual Insurance Company; premium subsidies are provided by the Ministry of Finance; agricultural producers in reclamation area also pay for part of the premium. China Insurance Regulatory Commission carries out regulation. Thus, this mode in general can be called the mutual cooperative mode based on government support. There are also some small-scale pilot projects using this mode in Zhejiang, Beijing and other regions.

2.3 Beijing mode Its main bodies include Beijing Municipal Government and its district governments, China Insurance Regulatory Commission, Beijing Municipal Rural Affairs Committee, Beijing Municipal Commission of Development and Reform, Beijing Bureau of Finance, commercial insurance companies, Farmer Specialized Cooperatives, farm product industry associations, leading agricultural enterprises, and agricultural producers. Under this mode, government implements agricultural insurance, establishes policy coordinative cooperation of agricultural insurance, and sets up the catastrophic risk reserve. While the insurance company offers services of agricultural insurance; and commercial reinsurance company provide reinsurance business. Financial department offers premium subsidies and management subsidies, and draws catastrophic risk reserve. Agricultural producer buys insurance voluntarily, pays for part of the premium, and obtains compensation from the loss of agricultural production and management cost. China Insurance Regulatory Commission carries out management and supervision. Thus, Beijing mode belongs to the commercial mode based on government support.

2.4 Zhejiang mode and Huaian mode Their main bodies include local government, relevant departments and coordina-

ting body, China Insurance Regulatory Commission, commercial insurance companies, agricultural technique departments, and agricultural producers. Under the two modes, government implements agricultural insurance. Financial department offers premium subsidies to insured agricultural producers. Insurance companies offer services about agricultural insurance. They share the risk, benefits, and premium according to their proportions in constitution. Government (including government at a lower level) along with commercial insurance company takes the risk and responsibility according to the agreed proportion. Agricultural producer buys insurance voluntarily, pays for part of the premium, and obtains compensation from the loss of agricultural production and management cost. China Insurance Regulatory Commission carries out management and supervision. Therefore, it can be seen that these two modes still belong to the mixed mode of nationalization and commercialization based on government support. But it is no longer the agricultural insurance company who shares the risk with commercial insurance company, but the government.

2.5 Commercial insurance company mode Some local governments and commercial insurance companies come into an agreement of entrusting commercial insurance company in order to offer policy agricultural insurance instead of government. Its main bodies include local government, relevant financial and agricultural departments, commercial insurance companies, insured agricultural producers, and supervision department of finance. Under this mode, local government offers insurance policy, reinsurance and agency fees; all the operating profit or loss belongs to the property of government. Insurance company provides specific business with a separate operation and independent accounting. Insurance company is entitled to charge according to the agreement, neither assuming responsibility for any risks, nor enjoying any other benefits. Agricultural producer buys insurance voluntarily, pays for part of the premium, and obtains compensation from the loss of agricultural production and management cost. China Insurance Regulatory Commission carries out management and supervision. Thus, this mode actually belongs to the nationalization mode based on government auspices. According to the *Preliminary Scheme for Establishing Agricultural Insurance System* by China Insurance Regulatory Commission, there is one mode trying to set up policy agricultural insurance company based on local finance support if permitted. However, no local government has carried out the practice of this mode yet, which also belongs to the nationalization mode based on government auspices.

Therefore, according to the legal analysis, all the policy agricultural insurance modes basically belong to the four legislative modes mentioned above. Among them, commercial mode obtains more attention.

3 Options for the legislation mode of policy agricultural insurance in China

Design for policy agricultural insurance system must first resolve the issues of legislative mode. Some scholars argue that selection of policy agricultural insurance mode should re-

flect the characteristics of government dominant, that is, the government-dominated mode of policy agricultural insurance system. Theoretically, there are three kinds of government-dominated modes of policy agricultural insurance system to choose: government management mode based on government auspices, cooperative agricultural insurance mode based on government support, commercial insurance enterprise mode based on government auspices. According to the national conditions of China at present, most scholars prefer the government management mode based on government auspices^[1]. Meanwhile, some scholars have proposed the establishment of a government leading mode with agricultural cooperative associations as the main body supplemented by commercial insurance companies^[4].

I believe that though the above-mentioned points of views are partly justified, stressing government auspices or lead, but there are obvious deficiencies. The former only emphasizes governmental organization and management, while the latter only stresses on the functions of mutual insurance organizations and commercial insurance companies. They both take certain mode as the main body, and neglect the functions of other modes. Thus, they result in biased instruction. I suggest that the legislative mode for the legal system of future policy agricultural insurance in China should take the advantages of all the modes in an all-embracing manner. A comprehensive legislative mode should also be established, containing various modes of nationalization, commercialization, mutual cooperative mode, and mixed mode of nationalization and commercialization. The reasons for my point of view are listed as follows:

(1) Publicity of agricultural insurance products determines that the state (government) should actively participate in the field of agricultural insurance and play a leading role, rather than supply products solely by the private sector according to market rules^[5]. Determination of both subject organizations and their relationships of rights (powers) and obligations should reflect the will of state, a representative of public interests. Thus, the policy feature of agricultural insurance system is ensured.

(2) China has a vast territory with various natural conditions; and levels of socio-economic development are greatly different. Therefore, only one mode for all the regions is not suitable. Instead, we should select different system modes suitable for local situations with provincial-level administrative region as the unit. It should be encouraged and supported by legislation; and government should offer multi-system modes for selection when constructing a system.

(3) Each legislative mode has its own advantages, and its respective advantages should be maximized. For instance, under the nationalization mode based on government auspices, government establishes state-owned agricultural insurance organization to operate policy agricultural insurance, so as to protect and realize the social and public interests. At the same time, means of the state power can better make up for the failure of market mechanism in the field of agricultural insurance, and can help to realize the best allocation of resources. Under

the cooperative mode based on government support, interests of its members have a high degree of consistency, so as to effectively prevent moral hazard and adverse selection of agricultural insurance. Under the mixed mode of nationalization and commercialization based on government support, we can combine the government support and market mechanism together. Thus, effect of government support measures can be effectively enlarged through market mechanism; intention of the government can be achieved through private insurance institutions; and the government resources can be saved significantly. Though there is conflict between the profit making of commercial insurance companies and the policy of agricultural insurance, commercial insurance companies can also participate in agricultural insurance with their own advantages only when there are corresponding measures to protect and support them.

(4) According to the legislative experiences in foreign countries, a country chooses a particular legislative mode. And this mode is in the continuous innovation and improvement. For instance, the United States, Canada, Mexico, Brazil and other countries adopt different modes at different historical periods. And the cost of institutional change is relatively great. China should carry out system innovation after making full use of other modes, rather than explore, converse and construct different systems at different periods. In other words, China should plan and build different modes at the same time on the same system platform. After the implementation of laws, all systems can be applied in practice at the same time in order to give full play to the advantages of different systems. And these system modes can be integrated on the same system platform. As long as the specific system details are designed, these systems can be matched and can form even greater system advantage. This is called the Advantage of Backwardness in legislation.

(5) By using different system modes on the same system platform, a unified national framework for policy agricultural insurance can be settled, so that legal basis is offered for a variety of useful agricultural insurances. According to the experiences of foreign countries, pilot of agricultural insurance should be carried out under the framework of law. Meanwhile, the complexity, normalization and protracted nature of agricultural insurance also require the protection of law.

(6) Adopting different system modes on the same system platform is also in line with the "law of large numbers" of insurance business. Different system modes can be combined together by the unification of national legislation, in order to spread risks to the maximum extent by relying on system.

4 Legislative framework of policy agricultural insurance in China

By referring to agricultural insurance legislation in foreign countries and developing experiences of agricultural insurance, this paper puts forward the main framework for the legal system of policy agricultural insurance in China combining with the experiences of practical agricultural insurance.

4.1 Legislative intent and legislative principle According to the fundamental position of agriculture in national economy,

the actual level of agricultural production and the needs of new socialist countryside construction, legislative intent of policy agricultural insurance is to compensate agricultural producers for accidents and natural disasters, to support and guarantee the smooth progress of agricultural production, to stabilize the income and the life of agricultural produces, to improve the risk and insurance awareness of agricultural produces, to promote the research and experiment of agricultural insurance, and to consolidate the fundamental position of agriculture in national economy.

Policy agricultural insurance should follow the principles of appropriate state support, basic guarantee, and gradual and steady development.

4.2 Supervision and management department and operation main body There are two ways to assure the supervision and management department of policy agricultural insurance. One is to ascertain the National Development and Reform Commission, Ministry of Finance, or Ministry of Agriculture as the supervision and management department for policy agricultural insurance, and to set an Agricultural Risk Management Bureau to supervise policy agricultural insurance. The other is to establish an Agricultural Risk Management Bureau managed by the above mentioned ministries. Its specific responsibilities include constituting and organizing the national agricultural insurance scheme, ensuring the target of insurance and the range of underwriting risk, examining the new products of agricultural insurance, insurance terms and premium rates, setting standards for economic cost evaluation, harmonizing the relationship between agricultural insurance and other agricultural support and protection policy, supervising the policy agricultural insurance business, establishing agricultural insurance database, guiding the business of policy agricultural insurance agencies, representing state to communicate with foreign agricultural supervision and management departments, state-owned agriculture insurance company and relevant international organizations about agricultural insurance.

There are two ways to set the national policy agricultural insurance organization. The first way is to set a new national policy insurance agency-Agricultural Insurance Company of China-as an independent enterprise legal person. The second way is to offer policy agricultural insurance by Agricultural Development Bank of China, to increase its amount of capital appropriately, to change and expand its business functions, and to reform organizations. Business scope of policy agricultural insurance organizations is offering reinsurance for agricultural insurance organizations, making agricultural insurance terms and premium rates, researching on the agricultural insurance products, setting up reinsurance contracts, offering subsidies for the agricultural producers and management body of agricultural insurance, carrying out agricultural insurance researches, guiding agricultural insurance organizations and agricultural producers to control or reduce disasters, and conducting agricultural insurance and risk education.

Provincial local government can set up policy agricultural insurance company with status of independent legal person

based on local financial investment according to the demands. Its range includes directly offering agricultural insurance service to local agricultural producers, and carrying out researches on agricultural insurance. Businesses of local policy agricultural insurance company according with the agricultural insurance planning of national agricultural risk management departments can be reinsured by the national policy agricultural insurance organizations.

Regulate the development and establishment of cooperative agricultural insurance organization, including its types, principles, institutions, business scope, rights (powers) and obligations of members, and legal responsibility. Types of cooperative agricultural insurance organization are mainly the agricultural insurance cooperatives and their associations, agricultural mutual insurance cooperatives, and agricultural mutual insurance companies. Agricultural insurance cooperatives and agricultural mutual insurance cooperatives can take a county as the unit, and set sub-cooperatives in towns. Associations can take prefecture-level city or province as the unit, encourage commercial insurance companies to set up the agricultural insurance business in order to offer agricultural insurance services to agricultural producers, and use the way of bidding to select the commercial insurance companies.

4.3 Business management Legislation regulates that according to the target of insurance and the actual local situations, we can adopt compulsory insurance, voluntary insurance, united insurance of Specialized Economic Cooperation Organization, the mode connecting with other agricultural subsidies and disaster relief offered by government, or contacting with agricultural credit. Agricultural insurance organizations are not allowed to refuse the insurance requirement of qualified policy-holder.

Reasonably fix the premium rate. During the initial stage of agricultural insurance planning, targets of insurance are mainly the food crop and livestock related to people's livelihood. In order to strengthen the pertinence and to improve the validity of agricultural insurance support, relevant government departments in charge can make a catalogue for the targets of policy agricultural insurance, divide it into different grades, and adjust and enrich it on time. Government should offer support at different degrees for the agricultural products listed on the catalogue.

Insurance responsibility belongs to the type of all risks or multi risks. At the initial stage of agricultural insurance planning, we can start from the most common risks easily leading to the risk of loss. Based on the accumulation of experience, we gradually expand the scope of risk. Two modes for ensuring the amount of insurance can be regulated for crop insurance. The first is to ascertain insurance amount based on direct production cost, and to offer differential treatments according to production costs in different areas. In areas with high level of economic development, high degree of agricultural commercialization and high level of agricultural industrialization, amount of insurance can be increased appropriately with direct production cost as the basis. The second mode is to confirm the amount

of insurance according to production. Amount of livestock insurance should be ascertained according to production costs and target values of different insurances. The amount of insurance should be lower than the value.

4.4 Fiscal and taxation support measures

(1) National or local policy agricultural insurance organizations and cooperative agricultural insurance organizations should be exempted from the registration fee. National finance should allocate start-up costs for the policy agricultural insurance organizations. State should give a certain degree of financial assistance to a newly established cooperative agricultural insurance organization.

(2) It should be regulated that central and local governments offer premium subsidies to the insured agricultural producers, management fee subsidies to agricultural insurance organization, and subsidies to agricultural reinsurance. Among them, government premium subsidies should be more than one half of the total premium. Central and provincial governments should share the financial subsidies mentioned above on a certain percentage. Financial capital supporting agricultural insurance is included in the central and local budgets.

(3) Policy agricultural insurance organizations and cooperative agricultural insurance organizations should be exempted from the registration fee. Corresponding proportions of tax incentives are given to other agricultural insurance enterprises according to their proportions of agricultural insurance business in total business of the enterprises.

(4) Establish national agricultural catastrophic risk fund to deal with catastrophic risk. Its sources of funding may include a part of national financial fund for agriculture as the starting fund, a certain percentage of an annual increase income of national finance, an amount from national disaster prevention and reduction expenditure, additional costs of agricultural risks from commercial insurance companies and agricultural benefited enterprises offering rural insurance business according to sales tax, some capital of the national grain risk fund, part of the national debt, "soft loan" from the World Bank, and social donations. This fund is managed by the Ministry of Finance to increase the capital funds of national policy agricultural insurance organizations, and to pay the over-payment part of catastrophe losses for state-owned policy agricultural insurance organizations. This fund also offers low-interest or interest-free loans to national policy agricultural insurance organizations after catastrophe losses when there is over payment; and it can be gradually repaid later, offset by financial allocation, or be canceled after the verification of NPC Standing Committee.

4.5 Legal responsibility A sound legal system is an important guarantee for the smooth implementation of policy agricultural insurance. Legal responsibility of the law system in policy agricultural insurance includes responsibilities of economic laws and the responsibility of invoking laws.

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政策性农业保险立法模式与立法框架研究

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摘要 研究了世界各国既有政策性农业保险立法模式,即政府主办下的国有化模式、政府扶持下的商业化模式、政府支持下的国有化-商业化混合模式、政府支持下的互助合作化模式,分析了各模式的特点。从法理上对中国政策性农业保险试点方案进行了归纳,主要有5种试点模式。①上海模式,属于政府扶持下的半商业化模式;②黑龙江垦区模式,属于政府扶持下的互助合作化模式;③北京模式,属于政府支持下的商业化模式;④浙江模式和江苏淮安模式,属于政府支持下的国有化-商业化混合模式;⑤商业保险公司代办模式,属于政府主办下的国有化模式。探讨了中国政策性农业保险立法模式的选择,模式应该体现政府的主导性特征。笔者认为,中国的政策性农业立法模式应兼采各模式之长,确立起综合型立法模式,理由有6点。①农业保险产品的准公共性决定了国家应该积极介入农险领域,发挥主导作用;②中国各区域自然条件、社会经济发展水平差异较大,不能均采用相同模式;③不同的立法模式有其特点,应最大限度地发展其优势;④国外的立法经验表明,立法模式不是固定不变的,而是在不断地进行创新和改进;⑤实行不同的制度模式,可以奠定中国政策性农业保险法律制度框架的基础;⑥符合保险经营的“大数法则”。介绍了中国政策性农业保险的主要框架,提出了财税支持政策性农业保险组织发展的措施。

关键词 政策性农业保险;立法模式;立法框架;国家支持

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杨凌农业高新产业示范区基础设施融资现状分析及应用 PPP 模式探讨

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摘要 首先对中国杨凌示范区基础设施融资现状进行了分析。目前杨凌示范区城市市政公用设施融资模式主要分为财政融资模式、负债融资模式、企业积累模式、经营资源模式、外商直接投资和民营资本融资模式5种,投资主体单一,融资渠道狭窄。另外,由于建设资金主要是通过财政投资和银行贷款方式取得,政企不分、垄断经营的现象仍然比较严重,资金使用效率低下,因此提出了以公共部门与私人企业合伙融资为基础的PPP模式,其中分别阐述了PPP模式的含义,模式的流程、实质,有效应用及所面临的风险。最后探讨了PPP模式在杨凌示范区的筹资应用。由于享受国家级高新技术产业开发区的各项优惠政策和国家对农业产业的倾斜扶持政策,不仅可以获得相对稳定的市场份额和较高的投资回报,而且可以充分发挥私人投资主体的积极性,提高项目的管理水平和服务质量,从各方面帮助政府满足社会公众对于基础设施的需求。但政府在引入PPP模式时也应注意到,应当建立良好的政府与私营部门的伙伴关系,积极进行实践,扩大应用范围,加快应用速度。另外,PPP模式投融资的运营模式以及在招标设计和建筑施工全过程积累的经验,将对杨凌示范区及其他地区的基础设施建设起到极其重要的借鉴作用。

关键词 基础设施;PPP模式;杨凌示范区