

THE AGRICULTURAL POOL CONTRACT AND ITS POSSIBLE EFFECTS IN PERU

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Abstract:

Agriculture has been one of the most important sectors in our country since its pre-Hispanic times, however, it has suffered inconveniences for its development, since in the 1970s with the Agrarian Reform, associations were promoted that ended up not being well managed, in largely due to the lack of knowledge in the management of investment projects of the peasantry and in part due to a deficiency of the state in promoting or facilitating, through a public entity, advice to producers, which generated multiple bankruptcies in the agricultural sector, in addition to of the very natural climatic impacts of our country such as the El Niño phenomenon, which eventually cause damage to the agricultural sector in some seasons. Despite the aforementioned adversities, Peru has made significant progress, it should be noted that in 2017, agriculture was consolidated as the second most important economic activity, due to the growth of agricultural exports, for which we can affirm that despite the various difficulties presented, the agricultural potential of the country is quite high and allows us to begin to establish some processes that facilitate or promote this activity.

Keywords: Agricultural projects, Pool Contract, Agricultural production, Industrial projects, Commerce.

I. Introduction:

The social market economy model implies the legal and political regulation of a liberal style of economy, in which there is room for competition, which seeks to encourage the free private initiative of entrepreneurs. This is because only with this economic model can the free competition of sellers and the margin of action of buyers be regulated.

In this way, the Pool contract is constituted, which by its legal nature is an atypical contract, since in our legal system it is not regulated, however, the precise definition of its nature is not entirely clear, since there are divergent points in the doctrine, especially in Argentina, which consider it an ad hoc contract, since each legal relationship that is presented in this type of contract is totally unique and repeatable.

Thus, the Pool Contract can be conceptualized as an associative contract, which can group two or more natural or legal persons who have the same or complementary branch of activity, and join together to obtain a common benefit, without constituting a new legal entity; specifically when we refer to the Pool contract, as can be seen in the various studies on the subject, pool relations can be presented in two market sectors, the first in the aeronautical sector and the second in the agricultural sector, or also called Pool of Sowing, which has been more widely manifested in Argentina. achieving excellent results in terms of production, in which it can be seen the grouping of several natural or legal persons, to carry out an agricultural exploration, in an extension of land previously indicated for the indicated activity, carrying out the natural tasks of planting, irrigation, fumigation, harvesting, transport of products, until the final commercialization of said products with the

common objective of distributing the profits among all farmers and companies of agreement to the party they have provided.

II. Materials and methods:

The Pool contract must be analyzed from the perspective of a comparative analysis, carrying out a study of the casuistry presented in the type of commercial relations observed in the Argentine economy and how the object of study and the procedures executed in this research are described, for which documentary analysis processes will be used on the results obtained and thus be able to propose a valid model to be applied in our country. It should be noted that this research refers to the modern pool contract, which will cover its definition, elements, nature, economic purpose, types of pool, advantages and disadvantages of the incorporation of the seeding pool in our country, to finally reach the conclusions.

III. Results and discussion:

Based on this, as mentioned in previous research, as we can see in Obiol (2016), we find that the Pool contract is a contract through which two or more parties, whether they are natural or legal persons, have the necessary means to perform a specific task, exploiting a certain line of business, and this with the aim of working more efficiently and equitably sharing the benefits and gains of the work done. In this sense, we can infer that in reality the figure of the pool is aimed at being a matter of associative contract, so the idea of its incorporation in the fifth book of the General Law of Commercial Companies, where these legal figures are regulated, would not be unreasonable.

In addition to or mentioned above, a series of substantial characteristics can be deduced, among which are: there are two or more parties involved in the contract, and this is important because when referring to parties it would be indicating that these can be natural or legal persons; On the other hand, it is also a characteristic that the parties unite, but do not merge, they simply associate to work together, but each part retains its own identity, in other words, it does not imply the creation of a new legal entity, nor the existence of a unified or common accounting to both.

On the other hand, it is also noted as a fundamental characteristic of the figure, that the union between these parties is for a common purpose, since they make available their own resources of each party in order to carry out tasks aimed at a common objective of all the associates, which in turn causes the profits and benefits of said work or tasks to be reflected equally among all the contracting parties. that is, all participants obtain profits, which will be distributed as indicated in the contract.

On the other hand, authors such as Farina (1999) argue that, in the Pool contract, two companies, generally corporations, lend each other a certain number of shares, so that each company has a stake in the share capital to a greater or lesser degree, thus producing the phenomenon known as community of interest or co-interest. This is already something much more complex, and its use is more applied to the type of aeronautical pool, so in reality this is not the way that we consider most suitable for the application of the contractual figure in the agricultural sector.

It is important to note that the Pool contracts that exist today are mostly those related to the aeronautical field, being perhaps the best known Pool worldwide, the one formed by KLM, Air France and Alitalia, which is why the Pool contract in the airline sector has been more

than proven and demonstrated its effectiveness and efficiency throughout almost 30 years of its execution; On the other hand, in the agricultural sector, this contractual form, although it has brought very good results, goes unnoticed since it is extinguished at the time of the culmination of the agricultural project, that is, with the harvest.

Regarding its characteristic of being an Associative Contract, we can take into consideration an essential characteristic of the Pool contract, which can be seen reflected in the definition of the contractual figure according to the General Law of Peruvian Companies, which states:

Article 438.- Scope: An associative contract is considered to be one that creates and regulates relations of participation and integration in specific businesses or companies, in the common interest of the intervening parties. The associative contract does not generate a legal entity, must be in writing and is not subject to registration in the Registry.

Authors such as Farina (1999) point out that these associative contracts are plurilateral contracts in the functional sense and in addition to collaboration, where the contracting parties, without prejudice to their particular interests, are legally bound in order to achieve a common objective, through which the associates try to satisfy their own particular interests. It concludes that, although the constitutive act of a company is a plurilateral, collaboration and organization contract, not every plurilateral contract, collaboration or organization must necessarily be a partnership contract.

Those dedicated to the industrial issue who have reached this point of the reading must be thinking that they see no difference between a Pool and a Joint Venture, but if we understand the Pool not as the aforementioned authors understand it when they take the scheme of the aeronautical Pool, but by directing it to the agrarian issue directly in order to understand it as a presumed coalition between companies, where two or more participants, who may be natural or legal persons, exchange within an appropriate procedure, a certain amount of inputs or technical-scientific knowledge, so that each of them directly contributes what they already possess to a given project, thus producing the phenomenon of co-interest or community of interests.

So basically we can determine that what is required for an efficient pool contract is to pool the necessary means for the exploitation of a certain line of business in order to carry out the joint tasks in a more efficient way, perfecting its operational elements to improve the results obtained in the execution of the joint work. establishing various means for the subsequent distribution of profits obtained, and with the possibility of exempting one or more of the associates from liability for possible losses that may arise in the execution of the contract. The latter being the most immediate position on the subject in reference, and can be defined as that which is agreed upon between several persons, which may be natural or legal, with the purpose of developing and exploiting economic activities or specific lines of business so that they can subsequently make an equitable distribution of the profits produced.

The elements that we can see in this type of contract are, on the one hand, the contractual parties, which, as we have already indicated, can be natural or legal persons, as Bravo (2017) points out. In this sense, we have that, strictly speaking, both natural persons and legal entities in the aeronautical or agricultural sector can agree to enter into a Pool contract.

Obviously, the most substantial difference that we can find between the two figures, that is, between the aeronautical pool and the agricultural pool, is the temporary nature of the latter, and this is due to the temporary nature of its nature and that of its benefits, which once the harvest has taken place necessarily requires a new project for the continuity of the link. since the contribution of any of the associates will consist of goods of a fungible nature and therefore extinct at the time of the completion of the productive activity. This process of attracting potential partners is pointed out in Obiol (2016) where it can be observed that the process of attracting investors is carried out in a similar way to that proposed by open companies in their offer to third parties, that is, that in a period close to the beginning of the planting campaign, the business offer begins to be published where it is proposed to certain owners of land that are not available to the public. are carrying out sowing work in them, proposing to make a temporary lease contract, that is, that said lease will last only the period of time between the sowing of the seed and the harvest resulting from it, as well as we will have that the contribution of the associate who contributes said seed, fertilizer, labor for the sowing process or hourly value costs in the case of the use of machinery either for the initial activities of plowing, sowing or harvesting the product.

From the above, it is more than clear that this process requires a joint exploitation, because the realization of the activity will require not only various products, but also the contribution of services that will determine aspects consistent with each Pool contract, since the contributions of each contract will be totally specific due to the seasons and specific requirements of the planting that is planned to be produced.

Now, why is it that we propose the figure as a more efficient way than any joint venture or any joint venture that already exists, simply because the contribution in this type of contract does not require effort or redirection of the activities of each of the participants in the activity, since what the figure seeks is literally an equitable benefit from the joint exploitation, that is, direct participation, not over the funds, or rather monetary resources, but rather that in this figure the idea is to agree on their respective exploitations in order to divide the acquired income equitably. The ways and forms in which this generated income will be distributed will be contained in the Pool contract, being subject to the periodicity of each member. It will also be subject to the service or frequency of the type of Pool accredited.

Now, of course, this contract is not regulated within our legal system, but that should not be a problem, because as stated in Article 1553 of our Civil Legislation which establishes that:

All private law contracts, including those that are not nominated, are subject to the general rules contained in this section, except insofar as they are incompatible with the particular rules of each contract.

Therefore, there is no problem in the legal aspect of the celebration of this figure, and the important thing about it is its purely economic purpose, which could also serve as a public scheme for the state to efficiently promote agricultural investment and not as in previous failed attempts such as the agrobank or even worse the system that was used with the agrarian bank.

This contractual scheme could be based on the existence of an associate, whose figure could fall on an entity such as the departmental chamber of commerce or the public universities that exist in each region, who could seek to promote the scheme without generating costs to the state, in addition to that, the fundamental thing for an adequate evolution of the figure is the participation in the projective stage of an engineer specialized

in agricultural production, who will carry out prior coordination in order to carry out the project of participation of various farmers or even peasant communities, who could not only participate in this activity with the provision of their land, but also who could contribute their labor, which would benefit them because the greater the participation in the costs of production, the greater the profit after the liquidation of the project.

This characteristic refers to certain owners of extensions of agricultural land in whose space no sowing work is carried out, the purpose, in addition, of contracting under this modality will be to make contractual ties with natural or legal persons dedicated to planting. The purpose of this Pool is not only to require the owners of medium or large tracts of land to be contributors; but, in addition to producing raw material, managing to include in this contractual method companies dedicated to the sale of all types of inputs used for agricultural production, as well as certified seeds, organic or chemical fertilizers that facilitate agricultural production.

If we take a look back in time and analyze historical situations such as our agrarian reform, we can indicate for sure that the purpose of the reform was the constitution of the Agricultural Production Cooperatives (CAP) and the Agricultural Societies of Social Interest (SAIS), which would be efficient and productive; however, this did not happen, since management was deficient, technical and managerial assistance was scarce, there were opposing interests among the employees themselves, who were also owners, and who finally extinguished such associations, each taking their own plot, condemning themselves to a radical and perennial economic crisis, as Eguren (2006) points out.

According to Wiener, in his book *Agrobanco Testimonio de parte*, he considers that, at the end of 1980, the Agrarian Bank excessively increased its placements, requiring renewal in its capital. García's government was debatable in its management of the bank, since worldwide it was told not to lend more, not to generate more debt with the bank; but this was ignored, so it was even a business to get into debt with the bank, since this money could be used for other activities, with zero interest, recovering a small part of what was loaned. The disorganization, lack of control and disorder in abundance, generated the disproportionate benefit for unscrupulous officials, suppliers, technicians and producers who accessed the loans; the Agrarian Bank became a phantom entity, since it only accumulates losses, it did not fulfill its true purposes, nor was it able to guide the agricultural sector for correct financing, which would boost economic growth in the agricultural sector. On the other hand, with the relaunch of the Agrobanco, in 2007, its restrictive concept was changed, to turn it into a more efficient financial institution, giving rise to a growth in direct placements to producers, especially those of coffee and other traditional products; However, despite the corrections that could be made, the entity continued with deficient control systems, and the beneficiaries themselves still do not have a credit culture because the State throughout its history prevented them from having good payment; therefore, a comprehensive solution to the financing problems of the agricultural sector is still pending. Wiener (2014).

Now, it is clear that a predominantly producing country like ours, requires adequate agricultural management to avoid the previous mistakes already mentioned in previous paragraphs, and for this we should take into account what were the exact points that generated the worst errors, and among them we can point out that an extreme interference of the state is not the most appropriate way to manage it and apparently after the third failed attempt that meant the Agrobanco, that has been made clear enough.

Now, another thing that we must point out is that if the state must participate, it should do so passively, such as establishing tax benefits when the participation of the peasantry or peasant or native communities has a high percentage in the realization of the project, thus also guaranteeing the economic growth of the sectors with the greatest need; By doing this, we would also achieve a real coherence between the social scheme of marking proposed in our Constitution and reality.

Having then the complete panorama of what the creation of an agricultural system has meant in our country, the question that should be asked and the one that this research seeks to resolve is: Would it be feasible to regulate privately an adequate mode of growth of the agricultural sector in Peru?, for this it must be considered what advantages and disadvantages this contract has, having as a precedent its application in Argentina, as established by various researchers such as Vignatti (2003) or Maizteguip (2009).

Among the improvements that have been seen in the various investigations consulted on the application of this figure in Argentina, we can see issues such as the technological advances that after the application of the contract can be learned by farmers who participate in the commercial activity; in addition to the natural diversification of the natural risks of any commercial operation.

In addition, each of the participants performs only what he or she masters, so that their participation is assured and the risk of errors is minimal, not only in terms of the production sector itself, but also in the aspects of transport, formalization, instrumentalization of activities or in the position to negotiate volume marketing prices between the partners and the potential customers of the project.

From the point of view of the State, we can also see benefits such as the maximization of the production of the various agricultural sectors, which will generate positive growth in the economy of the communities and promote their inclusion in the national economy, also naturally extending the areas of agricultural production, promoting small and medium-sized producers in an extremely efficient way.

Now, if we could indicate the existence of negative aspects of the figure, these would basically be three, which could also be corrected naturally after the conclusion of a few consecutive contracts, in the first place, perhaps the biggest problem is always being in the same purely productive sector, without the incorporation of added value in the product, the second problem is the overexploitation of ecosystems, in order to have large extensions of arable land, generating indifference in the environmental and social culture and to avoid a clear problem that arose in Argentina at the beginning of the application of this figure, what should not be allowed under any assumption is that this contract falls into the exclusive administration of the banking system, since the Argentine experience has shown us that some projects that had to be extended ended up generating too high interest rates and reducing their profitability.

In this sense, it can be seen that it is feasible and very profitable to regulate this legal figure in our country, since it will encourage the increase of the agricultural sector, which has been poorly developed and poorly regulated, but it must be carried out with the vigilance of the State, which must set limits, since what is wanted is that the farmer, micro and small companies benefit from this contract, and not that large companies take advantage of it, to generate a greater increase in their wealth, with concentration of economic power.

IV. Conclusions:

The agronomist pool contract is a perfectly viable contract within the national legal system, so there is no problem, legally speaking, in the execution of said contract.

The pool contract is an associative contract by which various natural or legal persons join in order to exploit a certain line of business, in order to obtain economic benefits consisting of the distribution of the profits in the way they have established at the time of drafting the contract, for which the profits can be distributed in two possible ways, the first is by means of a valuation of each contribution and based on the total of the project, calculate the percentage corresponding to each of the participants and a second way is to contractually agree on the perfect equivalence of the benefits, which would mean that the distribution of profits will be given in an equitable way.

The agronomist pool contract should be more widespread in our country since through its application the crops would increase and there would be a greater development in the economy, being the agrarian sector one of the poorest in our country due to the little intervention of the state regarding the advice they should have for a better use of the land.

We have a positive aspect with respect to the Planting Pool Contract, in terms of the contribution of starting up the economic sector of our region, as it is very useful; but, we must avoid the existence of a targeted regulation as we have already seen in other regulations such as Factoring, where the only beneficiaries have been financial institutions.

In addition, we can conclude that the Seeding Pool should be openly implemented, as long as the different modes and forms of protection of the attraction of investors are properly implemented, in addition to the conditions towards the offer to third parties, whether it is given through the Regional Chambers of Commerce or by the Public Universities.

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