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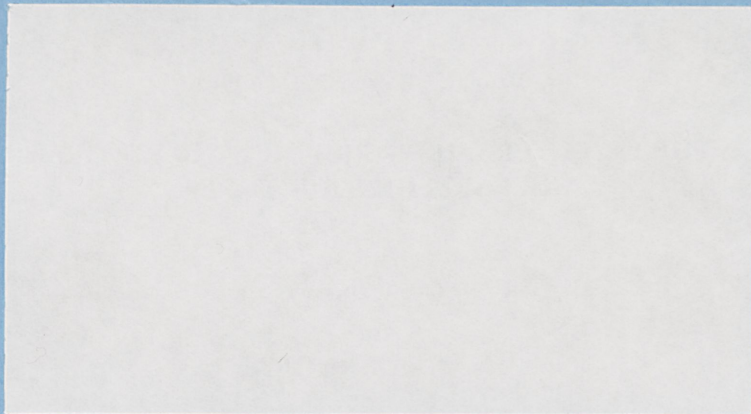
המרכז למחקר בכלכלה חקלאית
THE CENTER FOR AGRICULTURAL ECONOMIC RESEARCH

Working Paper No. 9609

THE LEGAL FRAMEWORK FOR LAND REFORM
AND FARM RESTRUCTURING

by
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THE LEGAL FRAMEWORK FOR LAND REFORM AND FARM RESTRUCTURING IN RUSSIA

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Land law in a market economy defines and protects property rights in land, and creates legal conditions under which rights can be transferred through markets. During Russia's transition to a market-oriented economy, changes in the land law are closely interlinked with laws governing farm reorganization, because they pertain to two interdependent and inseparable components of the reform process in agriculture. The legal framework for land reform and farm restructuring defines rights of owners of land and other farm assets, mechanisms for transfer of ownership, organizational forms for economic agents in the agricultural sector, and rights and obligations of these agents.

The most basic economic rights are the rights to own property, to transfer it either permanently or temporarily, and the right to engage in production and trade without undue interference from the government or any outside party. These basic rights are so fundamental that they are usually expressed in a constitution. Laws passed by the legislative branch clarify implementation of constitutional rights and specify penalties for noncompliance. More temporary measures of regulatory policy are issued in Russia as presidential decrees (*ukazy*) or government resolutions (*postanovleniya*). The current legal system in Russia relies heavily on presidential decrees, because new reform-oriented laws are very difficult to pass in the highly factious Russian parliament. Presidential decrees remain in force until permanent legislation is adopted by parliament.

The present article summarizes the legal framework of land reform and farm restructuring in Russia as it evolved since 1990 through the eve of the June 1996 presidential election. The article is based on numerous legal documents, which are listed separately at the end for the readers' convenience. The empirical data on land ownership and reorganization of Russian farms derive from two surveys conducted by the authors with the cooperation of the Agrarian Institute in Moscow in 1992 and 1994.

Land Ownership

Between 1917 and 1990, the state was the sole legal owner of land in Russia. According to the Soviet Decree on Land of October 1917, private ownership of land was abolished and the state allocated access through use rights. More than a year before the dissolution of the Soviet Union, when Russia was still RSFSR, the Law on Land Reform of November 1990 legalized land ownership by individual citizens, in addition to state ownership. The right of entities other than the state to own agricultural land was confirmed in an amendment to the Constitution of the RSFSR, and was also protected by the Law on Property in the RSFSR and the Land Code of the RSFSR, both adopted still under the Soviet regime in 1990 and 1991.

The new Russian Constitution that took effect in December 1993 recognizes that "land and other natural resources may be in private, state, and other forms of ownership" (article 9). It further affirms the right of "citizens and their associations", (i.e., both individuals and legal persons) to hold land in private ownership (article 36). Owners are granted rights freely to use and decide on disposition of land as long as use or disposition do not harm the environment or infringe on rights and legal interests of other

parties. Conditions and means for land use and disposition are to be specified on the basis of federal law; that is, the Land Code.

Although the Constitution sanctions private ownership of land, ten constituent republics of the Russian Federation do not recognize private ownership of land within their territories (Tatarstan, Bashkiriya, Dagestan, Komi, Mariel, Kabardino-Balkariya, North Osetiya, Tuva, Yakutiya-Sakha, and Koryakiya). These republics base their position on article 72 of the Constitution, which affirms that questions regarding ownership, use, and disposition of land, mineral deposits, water and other natural resources will be decided jointly by the Russian Federation and the constituent republics. Dual jurisdiction of federal and republic governments over land issues was established already by the Federal Treaty of 1991, two years before the new constitution was adopted. Article 72 of the Constitution thus reflects and perpetuates ambiguity regarding the jurisdiction of federal and regional authority in land issues.

The Russian Civil Code adopted in October 1994 recognizes three forms of ownership: private, municipal, and state. It affirms the right of citizens and legal persons to own land, freely to use land, and to engage in transactions in land. The Civil Code specifies that land not owned by citizens, legal persons, or municipalities will be owned by the state. In addition to ownership (*sobstvennost'*) of land by individuals and legal persons, the Civil Code recognizes other forms of land tenure, which are a carry-over from the Soviet regime, when private property was not allowed. These are lifetime inheritable possession (*vladeniye*) and permanent or temporary use rights (*pol'zovaniye*), which may be granted only in lands owned by the state or the municipalities. The freedom of disposition becomes progressively more restricted as the form of tenure changes from private ownership to use rights (Table 1).

Table 1. Forms of Land Tenure and Associated Disposition Rights in the Russian Civil Code (October 1994)

Form of land tenure	Tenure holder	Source of land	Disposition rights
Private ownership (<i>chastnaya sobstvennost'</i>)	Individuals, legal persons	Private owners, municipalities, the state	Sell, give away as a gift, mortgage, lease out, any other legal use
Lifetime inheritable possession (<i>pozhitzennoye nasleduyemoye vladeniye</i>)	Individuals	Municipalities and the state	Lease out, allow temporary use without payment; buildings erected on land become private property
Permanent use rights (<i>postoyannoye pol'zovaniye</i>)	Individuals, legal persons	Municipalities and the state	Lease out or allow temporary use without payment with owner's permission only; buildings erected on land become private property
Temporary use rights (<i>vremennoye pol'zovaniye</i>)	Individuals, legal persons	Municipalities, the state, other use-right holders	None
Leasing (<i>arenda</i>)	Individuals, legal persons	Private owners, municipalities, the state, other use-right holders	None; subleasing of farm land usually not allowed

Since the 1930s, agriculture in Russia was based on large-scale collective and state farms cultivating state-owned land. Each farm managed thousands of hectares, and privatization of agricultural land since 1992 basically involves transfer of ownership of these large tracts from the state to the collective. According to the letter of the law, the result is privately owned land. But this private land is not individually owned: its status is that of joint ownership (*obshchaya sobstvennost'*), legally similar to the joint property of a husband and a wife. While fully 83% of agricultural land in Russia has been privatized since 1992 in the sense that it is no longer owned by the state, only 12% is in individual tenure (Table 2). The rest is in joint ownership of workers in former collective and state farms undergoing reorganization.

Joint, as opposed to individual, ownership is defined in the Civil Code as private ownership by two or more individuals. A characteristic feature of jointly owned property is that its disposition requires unanimous agreement of all co-owners. Joint ownership may be of two varieties: shared joint ownership (*dolevaya obshchaya sobstvennost'*), when individual shares in the jointly owned property are defined (without physical designation of the underlying asset, however), and undivided joint ownership (*sovmestnaya obshchaya sobstvennost'*), when individual shares are not defined. In a survey of Russian farm enterprises conducted in 1992, 60% of land was reported in shared joint ownership and 30% in undivided joint ownership (Table 3). A survey repeated in 1994 established that already 80% of land in reorganizing farm enterprises was in shared joint ownership and less than 10% remained in undivided joint ownership. This is consistent with the responses of farm managers in both surveys, who overwhelmingly (95% of respondents) indicated that they were planning to distribute land shares to their members, i.e., to move from undivided to shared joint ownership (Brooks and Lerman, 1995; Brooks et al. 1996). Allocation of shares in joint property is obviously a necessary step before individual ownership of land can be established.

Table 2. Land Holding by Type of User in Russia: 1991-1995 (% of agricultural land)

Sector and Enterprise Type	Jan. 1991	Jan. 1994	Jan. 1995
State sector	58.2	17.6	16.5
Collective/cooperative sector	40.0	70.5	71.1
Incl. shareholding enterprises	0.3	52.5	54.2
Private sector	1.8	11.9	12.5
Private farms	0.0	5.0	5.3
Associations of private farms	0.0	2.2	2.4
Household plots	1.4	2.8	2.9
Other	0.4	1.9	1.9
Total agricultural land, mill. ha	213.0	210.1	

Source: Brooks and Lerman (1996).

Table 3. Land Ownership in Farm Enterprises and Land Tenure in Private Farms: 1992-1994 (in percent of average holdings per respondent)

Farm Enterprises			Private Farms		
Form of land ownership	1992	1994	Form of land tenure	1992	1994
Shared joint ownership	61.1	80.4	Private ownership	48.5	49.9
Undivided joint ownership	30.1	9.2	Inheritable possession	27.3	19.5
State ownership	4.4	10.2	Usership	7.2	6.6
Other	4.4	0.3	Leasehold from the state	17.0	24.1

Source: 1992 survey data from Brooks and Lerman (1995); 1994 survey data from Brooks et al. (1996).

While most of agricultural land was traditionally managed by large-scale farm enterprises, individual farming never disappeared in Russia (Waedekin, 1973). Around 1.5% of agricultural land (most of it arable) always remained in subsidiary household plots, cultivated by families of farm-enterprise employees. Since 1990 the amount of land allocated to subsidiary household plots doubled,

and in 1994 this subsector of Russian agriculture accounted for nearly 3% of agricultural land (see Table 2). The land in household plots was typically in a traditional Soviet form of individual tenure, so-called lifetime inheritable possession (*pozhitzennoye nasleduyemoye vladeniye*). Individual private farmers that began to emerge in 1991, when private ownership of land was already recognized, did not always receive land in private ownership either: according to recent surveys, only half the land held by private farmers is privately owned, while the rest is still in old forms of tenure inherited from Soviet legislation and in leasehold from the state (see Table 3). Throughout the legal discussion in 1993 and 1994, lifetime inheritable possession (as well as permanent use rights) were viewed as transitional forms of tenure to be superseded by ownership. The October 1993 Presidential Decree (No. 1767) allowed people holding land under lifetime inheritable possession, permanent use right, and leasehold from the state to convert their tenure to ownership in accordance with existing legal procedures, such as restrictions on maximum holdings. The transitional forms of tenure were expected to diminish naturally as conversion proceeded.

The Civil Code and other early legislation contain some legal principles that may constitute a serious obstacle to security of ownership and tenure. Land is subject to a number of obligations, which pertain to agricultural land in all forms of tenure, including private ownership. Among these are the obligation to use land for its specified purpose, i.e., for farming, and the obligation to preserve the fertility of the land. Failure to fulfill these obligations can lead to administrative termination of tenure rights. An individual or an enterprise may lose rights to farm land if the land is allowed to remain uncultivated or to be used other than for farming. This provision applies even to privately owned land, which may be taken away from the delinquent owner despite legal title. The motivation for these restrictions is clear: they are intended to create owner-operators of farm land, and to avoid reemergence of absentee landlords. Yet they unduly constrain changes in land use, many of which in any event will be consistent with rational use of land. The provisions furthermore create opportunities for administrative interference and corruption. The same goals can be achieved through economic market mechanisms, such as higher tax on agricultural land that is not actively farmed and financial penalties for environmental abuse.

Distribution of Land

Most agricultural land in Russia is currently allocated to existing farms. Assignment of land to new farms necessarily requires redistribution of existing land resources among users. The process of redistributing land among users and owners is thus one of the basic components of the land reform.

Article 1 of the 1990 Law on Land Reform states, "The objective of land reform is to allow different forms of land use to operate under equal protection of the law, to promote a diverse economy, and rational use and conservation of land on the territory of the RSFSR. In the course of reform, land allocation will be made to citizens, enterprises, organizations, institutions, associations (*ob"edinieniya*), and companies and their rights to land will be granted as determined by the laws of the RSFSR."

The first step in land distribution is determining how much of the original farm's land is eligible for redistribution. The farm can allocate no more than the average allotment per person, determined at the district level, times the number of participants in the distribution. The district norm is determined according to land-to-labor ratios within the district, and norms of distribution can vary at the local level within districts. The land allotment based on the district norm is distributed free, without any payment.

Land in excess of the total distributable to members remains in state ownership and may be retained under use rights by the farm enterprise. If the undistributed land is wasteland or is not used by the farm, it passes to the local reserve or redistribution fund. Contrary to this provision of the Land Code, the presidential decree of December 1991 requires transfer of all undistributed land to the redistribution fund and thus raises questions as to whether farm enterprises can retain use of land in excess of district norms

per person. Instructions issued by Aleksander Rutskoi in his capacity as the Vice President of the Russian Federation in charge of agriculture on October 30, 1992 required local authorities to return land from the redistribution fund to original farms. The disposition of land in the redistribution fund is thus ambiguous.

The Land Code stipulates that land is to be distributed to *employees* of state farms and *members* of collective farms. This language implies that pensioners would be included in distribution of kolkhoz land, but excluded from distribution of sovkhoz land. The presidential decree of December 1991, setting reorganization procedures for collective and state farms, broadened the group of eligible beneficiaries: the decree states that pensioners are to be included in the distribution on both state and collective farms and that employees of social services may also be included at the discretion of the farm's collective.

By defining a broad group of eligible participants in land distribution, the December 1991 presidential decree reduces the share of each individual. In order to allow small land shares to be consolidated into larger, commercially viable units, the decree permits recipients of land shares to sell them to other recipients within an enterprise at freely negotiated prices. Rights to sell land shares were not confirmed in subsequent permanent legislation, however, and it took until February 1995 for the government to come up with a resolution setting out practical procedures for the sale of land shares by individuals. The October 1993 presidential decree went much further than the December 1991 legislation by removing the restriction on sale of physical land plots (Wegren, 1994). It was reinforced by the March 1996 presidential decree, but until the principle of land sales is confirmed in permanent legislation, the legal status of any transfers under presidential decree will be ambiguous.

The Law on Peasant Farms of November 1990 established another group of players entitled to participate in the process of land distribution. The law defined a new category of "peasant farms" (*krestyanskiye khozyaistva*), independent family farms established outside the collectivist framework, in contrast to traditional household plots operating within collectives and to new shareholders who left their land shares within collective production structures. Suitably qualified individuals, both rural and urban residents, could apply to local authorities to receive an allotment of land from the redistribution reserve. Members of collectives could unconditionally withdraw their land share in the form of a physical plot in order to start a peasant farm. The mechanism initiated by the 1990 Law on Peasant Farms created by the end of 1995 some 270,000 private farms in Russia with average holdings of 42 ha per farm. Most people who set up private farms received land from the redistribution reserve. Very few private farms were established on land withdrawn from collective farms or enterprises in redemption of shares.

Land Transactions

The Russian Constitution and the Civil Code protect the right of land owners to decide on disposition of their land subject to provisions of the relevant federal legislation. Because the Constitution is worded to protect only general rights of ownership and disposition, and defers to federal law with regard to constraints on transactions, the highest piece of federal legislation with regard to land, namely the Land Code, will determine whether land owners have broad or narrow rights to conduct transactions in land. The status of the federal land code in relation to local land law, as well as its content, will need clarification in order for rights to engage in land transactions to be fully specified. A land code specifying broad powers of transaction will expedite development of land markets, and hence facilitate transfer of land to most efficient producers, improve land values, and increase investment in agriculture. The federal land code should explicitly protect rights to rent, sell, and mortgage land, so that provincial and local authorities cannot impose restrictions on transactions. Because of the very general wording of

the Constitution with regard to land transactions, the federal land code is the key legal instrument through which rights to engage in land transactions can be affirmed.

The Russian Land Code currently in force was passed in April 1991, before the dissolution of the Soviet Union and before the major reforms in agriculture really took off. Since then, it has been largely superseded by various presidential decrees and government resolutions, and much of it is now irrelevant and outdated. However, no new Land Code has been passed, mainly because of basic disagreements regarding land policies between the government and parliament. The government does not have a sufficiently solid majority to push through parliament an updated land code that will properly reflect the accumulated years of reform legislation, while the opposition forces in parliament have failed as recently as September 1995 to pass a highly conservative land code that would have eliminated much of the reform-oriented achievements of Yel'tsin's administration. No doubt the debate around a new land code will resurface after the presidential election of June 1996.

With the aim of preventing absentee ownership and speculation, the original land reform legislation in Russia imposed severe restrictions on leasing of land and prohibited sales of agricultural land during a 10-year moratorium (except for the very small proportion of land about 3% of the total held in household plots and vegetable gardens). These initial restrictions circumscribing the rights of owners in the important area of land transfer were abolished by presidential decree in October 1993, exactly 76 years after the 1917 Decree of Land (Wegren 1994). Although the substance of this decree must be further strengthened by permanent legislation, it was a step that removed a major obstacle to development and functioning of land markets in Russia.

The basis for land transactions is provided at present by two presidential decrees: the decree of October 1993, "On Regulation of Land Relations and Development of Agrarian Reform," and the decree of March 1996, "On Realization of the Constitutional Rights of Citizens Concerning Land." Their main purpose was to establish the legal status of land shares within large-scale farm enterprises. A second purpose was to sanction the right to conduct transactions in land. According to the decrees of October 1993 and March 1996, land owners have the right to sell, bequeath, mortgage, rent, and exchange land. Land owners and owners of land shares also may exercise land rights by leasing their land out to private farmers or assigning it to various forms of shareholding enterprises. The March 1996 decree removes restrictions on the amount of land that can be leased in or out for farming.

The presidential decrees and the Civil Code provide relatively full assurance of the right to lease land in and out. This right applies to privately owned land, as well as land held in lifetime inheritable possession and in use right (see Table 1). During the early stage of development of land markets in Russia, rental transactions will be important. Energetic farm operators may desire to rent land from pensioners (who constitute nearly half the holders of land shares) and other owners or from the state and thus increase the efficiency of land use even if the operators are not in a position to buy additional land. Experience in East Central Europe and in other former Soviet republics indicates that leasing of land is a widespread option, regardless of whether land sales are allowed or not.

Mortgage of land provides an important financing instrument for farmers in market economies. Under current Russian law (October 1993 Presidential Decree No. 1767 and the Civil Code) land owners have the right to use privately owned land as collateral. Land held in other forms of tenure may not be mortgaged by the holder. This reaffirms the earlier provisions of the April 1991 Land Code and the May 1992 Law on Mortgage, which in principle established the right to mortgage land. Banks, however, do not yet in practice accept land as collateral, and most loans that are secured with assets are secured with machinery, equipment, or animals (Brooks and Lerman, 1995). Before accepting land mortgage as a viable collateral for investment credit, banks will have to wait for market valuation of land to emerge and for foreclosure to become acceptable to courts and, no less important, to public opinion. Without effective foreclosure mechanisms, banks will not be able to recover bad loans and generate the liquidity

required to continue functioning as a lender. Without active land markets, there will be no observable market values for land, and banks will be unable to determine the collateral value of a parcel of land. So far, valuation of land in Russia is based on "normative tables" calculated using administratively prescribed formulas, which are not directly related to real economic values and cannot be used as a basis for mortgage lending.

Farm Restructuring

The fundamental motive force behind farm reorganization was provided by the Law on Peasant Farms of November 1990, which established the right of members and employees of collective and state farms to exit with a share of land and assets in order to start a private farm. This right gave members for the first time a meaningful choice between different forms of farm organizations. A number of changes in procedures for defining, calculating, and distributing shares have been introduced since 1990, but the basic right of members to leave with land and asset shares has been affirmed.

The practical mechanisms for farm restructuring derive from presidential decree "On Immediate Measures for Implementation of Land Reform" and government resolution "On Procedures for Reorganizing State and Collective Farms," both issued in the end of December 1991. These documents defined a process whereby within approximately one year the farms would call general assemblies to decide and vote on reorganization, and thereafter register according to the decision of the meeting under a newly chosen form. The original intention was to transform all traditional collective and state farms (kolkhozes and sovkhoses) into new corporate forms recognized by the Law on Enterprises and Entrepreneurship, the Russian "Corporate Act." However, a supplementary government resolution of March 1992 ("On the Course and Development of Agrarian Reform") reinstated the option of "retaining the old form," i.e., re-registering as a state or collective farm, provided the land tenure within the farm conformed to prevailing law and members had free right to leave the farm with asset and land shares to start private farms

Upon registration the farm would assume ownership of its land in the name of the shareholders, unless the assembly elected to remain a state farm. Non-land assets were already owned by the shareholders if the farm was in the past a collective farm, but upon reorganization the ownership would be made explicit through the designation and distribution of shares. Shareholders of newly reorganized state farms received share ownership of non-land assets upon registry as one of the non-state forms of organization. As shown in Table 4, 95% of farms had gone through the process by 1994. Nearly half of farm enterprises registered as closed shareholding farms, both joint stock companies and limited liability partnerships, and 35% of farms elected to remain collective or state farms.

The December 1991 government resolution defined the general outlines of the share system. The resolution did not offer guidance for farms that wished to proceed beyond creation of a shareholding structure essentially the same as the predecessor state or collective farm. Nor did this resolution require that farms determine the value of individual asset shares and the size and location of individual land shares, or distribute share documents to shareholders. Although compliance with the announced regulations was high, it was largely formal. Many farm employees surveyed in the winter of 1992-1993 were not aware that their farms had changed organizational form (Brooks and Lerman, 1995). In 1992 few farms determined land and asset shares, and even fewer distributed entitlement documents to shareholders. Additional instructions on determination of land and asset shares were included in Government Resolution of September 1992, entitled "On Procedures for Privatization and Reorganization of Enterprises in the Agro-Industrial Complex." By early 1994, 90% of managers participating in a repeat survey indicated that the size and value of shares had been determined on paper (Brooks et al., 1996). Few farms had distributed assets corresponding to the shares, and few farms began

paying dividends to shareholders. The share determination did not have much practical value other than as a step toward future restructuring, but this step had been taken on most farms by the end of 1993.

Table 4. Agricultural Enterprises of Different Organizational Forms (in thousands)

	Jan. 1993	Jan. 1994
Re-registered farm enterprises	19.7	24.3
Percent of all farm enterprises	77%	95%
Retained former status during re-registration	7.0	8.4
Closed shareholding firms, limited liability partnerships	8.6	11.5
Open shareholding firms	0.3	0.3
Agricultural producers' cooperatives	1.7	1.9
Associations of private farmers	0.7	0.9
Registered private farmers	182.8	270.0
Private farms created through enterprise reorganization	43.6	81.6

Source: Brooks et al. (1996).

Where members chose to implement a more fundamental internal restructuring, a methodology was needed to match actual land and physical assets to shares, and to allow regrouping and trading of shares to form new business units in place of the original shareholding farm. A number of farms proceeded on their own initiative, but in the absence of more detailed guidelines, practical issues of implementation limited the process. A methodology for designing and conducting an internal "auction" (a "redistribution meeting") for land and physical assets against shares was pioneered on a small number of pilot farms in Nizhnii Novgorod Province in 1992 and 1993, and implemented more widely in several provinces in 1994 and 1995. The Nizhnii Novgorod experience received formal acknowledgment and recognition in two Government resolutions: "On the Practice of Agrarian Transformation in Nizhnii Novgorod Province" (April 1994) and "On Agricultural Enterprise Reform Allowing for the Experience in Nizhnii Novgorod Province" (July 1994). These resolutions recommended that the principles used for farms in Nizhnii Novgorod Province be extended to all of Russia. A summary of the Nizhnii Novgorod farm restructuring procedure is presented in Table 5.

With the exception of the farms that were wholly reorganized through the Nizhnii Novgorod pilot program and its recent extension, most reorganizations did not proceed beyond re-registration of the original farm under a new form. The differences among the various new organizational forms were not clearly specified legally, nor perceived by participants, and the choice of form appeared to be arbitrary.

One of the main lessons of the Nizhnii Novgorod project was that participants needed close guidance and intensive advice in order to move beyond formal re-registration to actual restructuring. By early 1995, the pace of farm restructuring appeared to have stalled at the stage of formal registration with little substantive change. Government Resolution No. 96 of February 1, 1995, was intended to strengthen the legal basis for transactions in land and asset shares and further clarify procedures for reorganization for farms that had not yet reorganized. The provisions of Resolution No. 96 with regard to land remain in effect until passage of the new Land Code. In addition to clarifying transactions with shares, the resolution provides sample documents for recording transactions in land and shares.

Some enterprises (1900 nationwide) registered as agricultural producers' cooperatives between 1992 and 1995. This form of organization was among the options specified in the decrees and it is one of the business structures recognized by the Civil Code. However, the legal structure of producer cooperatives was not well defined due to lack of a cooperative law. A new Law on Agricultural Cooperation was

adopted in December 1995. The law recognizes agricultural production cooperatives and a wide range of service cooperatives that may engage in processing, marketing, input supply, farm and rural services, and even credit and insurance. Production cooperatives are based on member labor, which may be augmented with hired workers. Service cooperatives, on the other hand, do not require members to work in the cooperative: the only requirement is that members take part in the business activity of the service cooperative.

Table 5. Nizhnii Novgorod Farm Restructuring Procedure

Preparatory Work

- Inventory of land and assets
- Preparation of eligibility lists
- Calculation of land and asset shares
- Approval of distribution plan by General Assembly

Stage 1: Distribution of Shares

- Distribution of share certificates to eligible individuals
- Acquainting shareholders with their rights and options

Stage 2: Creating New Enterprises

- Identification of technologically independent subdivisions of existing farm
- Regrouping of shareholders through negotiation, registration of enterprises
- Concluding contracts between shareholders joining the various enterprises

Stage 3: Auctions

- Division of land and assets into lots
- Submission of bids for land and asset lots
- Physical distribution of land and assets through an auction

Stage 4: Transfer of Property Rights

- Physical transfer of land and assets
 - Issuance of title
-

Source: IFC (1995).

An agricultural enterprise currently registered under other forms of organization can follow the procedures of the Civil Code and the Law on Agricultural Cooperation to reorganize and register as a production cooperative. The new cooperative law contains fairly detailed provisions on creation of cooperatives in the process of restructuring of agricultural organizations. In practice, it is expected that all remaining *kolkhozes* and a number of other shareholding and limited liability structures will reorganize and register as agricultural production cooperatives. The term "collective," the root word of *kolkhoz*, will no longer be used to describe these agricultural enterprises, which will instead be cooperative farms, or *koopkhozy*. The new law of cooperatives is likely to bring a large share of agricultural resources under its jurisdiction.

The Ambiguous Status of Land Shares

Land shares are created and defined when a state or collective farm begins the process of conversion to a privatized shareholding enterprise. The preamble to the December 1991 resolution on farm restructuring states, based on the 1990 Law on Peasant Farms, that shareholders have an unconditional right to remove land and asset shares from an agricultural enterprise in order to start a private farm, without receiving permission of the farm administration or the general assembly of the members.

According to the government resolutions of 1991 and 1992, recipients of land shares are required to file an intention of disposition of the share with the internal farm commission for reorganization. The options for disposition of land shares include: receipt of land and/or other assets in physical form upon exit to start a private farm or other activity outside the enterprise; sale of the share to other members or to the enterprise; investment of the share in the equity capital of an agricultural enterprise, which is broadly defined to include the former collective or state farm in its new form, as well as a variety of other legal forms of organization, such as partnerships, joint-stock societies, or producer cooperatives.

The 1991-1992 government resolutions, however, do not specify what happens to the land share if it is not withdrawn for private farming, and is instead invested in establishment of a new agricultural enterprise. Between 1992 and 1995, recipients of land shares generally assigned them to shareholding enterprises organized on the basis of the former collective or state farm with the objective of continuing collective production (possibly only in the interim period). At that time, the precise legal status of joint ownership was unclear. The rights and obligations of the individual holder of a land share and the collective of shareholders were ambiguous. For example, it was not clear if title to the land would pass to the enterprise, nor was it clear if withdrawal of land by individual shareholders would require permission of all co-owners, or perhaps would be ruled out altogether. Clarification of the status of jointly owned land in shareholding enterprises came with passage of the Civil Code in October 1994 and Government Resolution No. 96 ("On Procedure for Realization of Rights of Owners of Land and Asset Shares") in February 1995, after most shareholders had already assigned their land into joint ownership.

The Civil Code, in line with the accepted practice of property rights of business organizations in most developed countries, unambiguously states that any property invested by an individual upon entry into a business organization (whether a limited or unlimited liability partnership, a joint-stock company, or a producer cooperative) becomes the property of that organization and is no longer owned by the individual. Government Resolution No. 96 applies this principle to investment of land and asset shares by former collective farm members in a new agricultural enterprise. Thus, when individuals assign their land and asset shares to an agricultural enterprise in the form of statutory payment for the right to participate in the enterprise (as a contribution to the equity capital of the enterprise), the land and assets are transferred from the status of joint ownership by a group of individuals to the status of ownership by a corporation (an enterprise). Both are forms of private ownership, but the designation of the owner is totally different; in the one case the owner is the individual, and in the other the enterprise.

Once the share is invested in the equity capital of an enterprise, the shareholder loses the right to request allocation of a physical plot upon exit: compensation will be only in the form of value received by selling the share to another investor. However, instead of investing the land share in an agricultural enterprise, the individual has the option under Government Resolution No. 96 to lease the share to the enterprise (or to other individuals) for a short term or simply invest the use right of the land share in the enterprise (for a period not exceeding three years). In either case, the individual retains ownership of the land share and of the underlying asset, and can subsequently (upon termination of the agreed term) request to withdraw land in kind and exit from the enterprise to start a private farm. The by-laws of the enterprise determine whether investment of use rights is an option for potential investors in a given farm enterprise. The right of leasing land shares to the farm enterprise is reaffirmed in the December 1995 Law on Agricultural Cooperation and in the March 1996 presidential decree.

While Government Resolution No. 96 establishes a procedure only for exit of owners of land shares (i.e., individuals who have not invested their shares in the equity capital of an agricultural enterprise), the Civil Code provides guidelines also for the more general case of exit of any individual from an enterprise. Upon exit from an enterprise of any organizational form, except a joint-stock company, the individual receives the value of the share of the investment in the enterprise. The value can be received in cash or in kind (land or assets in physical form). In limited liability partnerships and societies,

compensation in kind has to be negotiated with the other owners of the enterprise. In producer cooperatives, the choice between the two options is left to the cooperative charter. In joint-stock companies, the exiting individual simply has to find a buyer for the stock, as is the standard practice everywhere in the world.

The Law on Agricultural Cooperation of December 1995 specifies that a member entering a cooperative can use the privately owned land plot or the land share as the initial statutory investment in the equity capital of the cooperative. In this event, the land plot or the land share become the property of the cooperative. Alternatively, the member can lease the land plot to the cooperative, retaining ownership. This provision of the new cooperative law is clearly at variance with the current draft of the Land Code, which only allows partial and short-term leasing of privately owned plots. In order to take advantage of the legal right to retain ownership of their land share, prospective members must be able to meet the investment requirement in the equity capital of the cooperative from other resources. Since few prospective members have capital other than land and asset shares in the former farm enterprise, membership in a producer cooperative will involve transfer of land ownership to the cooperative in many cases.

The cooperative law, similarly to the Civil Code, provides that upon exit members receive the value of their share in the cooperative, either in cash or in kind. Exit with a physical plot of land in principle is not conditioned on the member's intention to establish a private farm. The decision between the two alternatives of cash redemption or allocation of a physical plot is left to the cooperative charter, or to the general assembly if the charter does not address the issue.

The new cooperative law was followed by a presidential decree of March 1996, which consolidated some of the principles of land reform that appeared threatened in the second half of 1995 by the draft land code before the Duma. The decree provides a detailed list of what owners can do with land shares. This list gives land owners the right to engage practically in any transaction in land shares, as long as the use of land for farming is protected. Moreover, transactions in land shares do not require consent of other shareholders in the organization. In addition to selling the land share, exchanging it for an asset share or another land share, passing in inheritance, or giving it as a gift, the owner may request conversion of the land share into a physical plot in order to establish an individual farm or lease the plot to another private farmer, household, or farm enterprise. The land share can be invested in the equity capital of a farm enterprise. Alternatively, if the holder of the land share decides to retain ownership of the share, its use right can be leased to an agricultural producer.

Conclusion

A legal framework for land reform in Russia has been created over the past six years. Most of the impetus for development of the legal framework has come from the executive branch of government at the federal level. The outcome of the reform process has been a very significant reduction in the proportion of agricultural land owned by the state, with most of the land, however, moving into ownership by enterprises or collectives, and very little owned by private individuals. This outcome is in marked contrast to developments in East Central Europe, where restitution procedures moved large proportions of agricultural land into individual private ownership, even though much of the land remains collectively managed.

The Russian legal framework for land reform remains fragile and ambiguous in the absence of a land code protecting private property rights in land. The fragility reflects a fundamental lack of consensus on the merits of private property rights in land and a lack of understanding of the role of land markets. In surveys of farm managers, employees, and private farmers, a majority of respondents support private ownership of land in name only, without the rights of disposition that give ownership

economic meaning and that give land value. The lack of support for fully functioning land markets is paradoxical, because both opponents and supporters profess commitment to the same objectives; i.e., preventing concentration of land in large holdings or latifundia through the dispossession of the rights of holders of land shares. Opponents of land markets argue that absentee land-owners and speculators will buy up large holdings, and that the rights of the farm labor force can be protected only in the collective and cooperative structure inherited from the past. Supporters of land markets argue that the collective and cooperative enterprises are the feared latifundia, and that the rights of rural people can be protected only when they become genuine owners of assets that have market value, including land.

Resolution of the current impasse on land reform will affect the property rights of rural people. It will also affect the extent to which market reforms can be pursued in Russian agriculture. If land markets do not function, the provision of commercial financial services for agriculture is likely to remain very constrained, and the state will retain a primary role in allocation of resources in the sector. If land cannot move readily among users, as it does on land markets, Russian agriculture will attain competitiveness more slowly, if at all, and calls for subsidization and intervention will be frequent. If rural households are not confident that they can recoup investment in land and farms through sale, if necessary, they will not invest their savings in farming. In private agriculture elsewhere, savings of rural households are a primary source of investment in agriculture. Russian agriculture will thus be denied a very important source of capital for investment, and rural people will forgo opportunities to earn potentially high returns on investments in their own farms.

Confirmation of legal rights to ownership and disposition of land are not the only issues of importance to recovery of Russian agriculture. Progress on reform of the financial sector and creation of more active and competitive domestic markets for both inputs and farm products are also important. The outcome of the debate about land rights is important because it will have an impact on all dimensions of agrarian reform, and will signal the extent to which the political system is committed to building a framework for market transactions in agriculture.

**List of Russian legislative documents mentioned in the text
(in chronological order)**

- Constitution of RSFSR
Federal Treaty
1990 Nov. Law on Land Reform of RSFSR
1990 Nov. Law on Peasant Farms
1990 Dec. Law on Property in the RSFSR
1990 Dec. Law on Enterprises and Entrepreneurship in the RSFSR
1991 Apr. Land Code of the RSFSR
1991 Dec. Presidential Decree "On Immediate Measures for Implementation of Land Reform"
1991 Dec. Government Resolution "On Procedures for Reorganizing State and Collective Farms"
1992 Mar. Government Resolution "On the Course and Development of Agrarian Reform"
1992 Sep. Government Resolution "On Procedures for Privatization and Reorganization of Enterprises in the Agro-Industrial Complex"
1993 Oct. Presidential Decree No. 1767 "On Regulation of Land Relations and Development of Agrarian Reform"
1993 Dec. Constitution of Russian Federation
1994 Apr. Government Resolution "On the Practice of Agrarian Transformation in Nizhnii Novgorod Province"
1994 Jul. Government Resolution "On Agricultural Enterprise Reform Allowing for the Experience in Nizhnii Novgorod Province"
1994 Oct. Civil Code
1995 Feb. Government Resolution No. 96 "On Procedure for Realization of Rights of Owners of Land and Asset Shares"
1995 Dec. Law on Agricultural Cooperation
1996 Mar. Presidential Decree "On Realization of the Constitutional Rights of Citizens Concerning Land"

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