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A Legal Framework for Soviet Privatization*

Olga Floroff** and Susan Tiefenbrun***

I. INTRODUCTION

The Soviet Union is committed to economic reform and democracy. The recent unsuccessful *coup d'etat* of August 19, 1991, demonstrates the seriousness of this commitment by the Soviet people and their government.¹ Legislation and privatization are required to implement economic reform. Just twenty-four hours after the *coup* began, Boris Yeltsin, President of the Russian Federation, announced that he had just signed a decree declaring that all property within the Russian Federation belongs to the republic and not to the state. This decree, together with other land and property laws enacted by the Russian Federation and the USSR, reflect a general desire for the establishment of republican independence, the ownership of private property, and the implementation of free enterprise and economic reform.

Recent dramatic events in the Soviet Union have resulted in the failure of a *coup d'etat*, the weakening of the central government, the rapidly developing disintegration of the Soviet Union, and the implementation of significant changes in the legal structure of the USSR.

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1. See Thom Shanker, *Soviet Hardliners Oust Gorbachev*, CHICAGO TRIBUNE, August 19, 1991, at 1.

The USSR Council of Ministers was replaced by the Cabinet of Ministers, and has again been replaced by the Interrepublican Economic Committee, which will perform fewer functions than the USSR Cabinet of Ministers.

The pleas and proclamations of republican independence are being heard both politically and legally. Evidence of the positive response to the desire for independence is expressed by the increased importance of republican legislation. Even though all-union laws have not officially been repealed by the republics, some republics have rejected the application of certain all-union laws on the territory of their republics. For example, Resolution of the Russian Soviet Federative Socialist Republic ("RSFSR") Supreme Soviet on the Law on Property expressly states that only Article 25 of the USSR Law on Property shall be valid on the territory of the RSFSR.² Republican laws like the RSFSR Law on Foreign Investment³ provide foreign investors with stronger guarantees and better conditions for their investment in the Russian economy than the equivalent USSR Law on Foreign Investment⁴. This conflict between the role and importance of the republican and the all-union laws is called the "war of the laws." The war of the laws is currently being won by the republics because of the rapid decline of central authority in the Soviet Union. Therefore, lawyers and businessmen doing business in the republics of the Soviet Union must first consider provisions of the republican laws and determine whether these laws have been enacted. They should also consult the all-union laws to determine whether these laws are still in force in the specific republic with which they are dealing.

It is generally agreed that state enterprises in the Soviet Union are too inefficient to meet the demands of the Soviet economy. Aided by the implementation of new Soviet legislation, the Soviet Union is moving away from the protection and control of a planned economy towards the freedom of a market economy. Certain new laws such as

2. Resolution of the Supreme Soviet of the RSFSR on Entry Into Force of the Law of the RSFSR "On Property in the RSFSR," *published in* "The Most Important Documents of the Month," collection of government documents, Jan., 1991. (Novosti trans. 1990) (enacted December 24, 1990, by the Supreme Soviet of the RSFSR) [hereinafter RSFSR Resolution on Property]. This resolution sets forth the scope of the RSFSR Law on Property and a time table for its effectiveness. See The Law of the Russian Soviet Federative Socialist Republic on Ownership and Property, *published in* "The Most Important Documents of the Month," collection of government documents, Jan., 1991 (1990) (enacted the same day as the RSFSR Resolution on Property) [hereinafter RSFSR Law on Property].

3. Law of Russian Soviet Federative Socialist Republic on Foreign Investment in the RSFSR, *published in* "The Most Important Documents of the Month," collection of government documents, July 1991.

4. *The Fundamentals of Legislation on Foreign Investment in the USSR*, IZVESTIYA, July 24, 1991 (enacted July 5, 1991) [hereinafter Foreign Investment Law].

the Cooperatives Law,⁵ the Leasing Law,⁶ the Land Law,⁷ the Property Law,⁸ the Enterprises Law,⁹ the Joint-Stock and Limited-Liability Companies Regulations,¹⁰ the Small Enterprises Resolution,¹¹ the Investment Law,¹² and the Foreign Investment Law¹³ are paving the way for the democratization of the Soviet Union and the transition from state to private ownership of property and enterprises.

The nine above-mentioned mutually dependent laws and legislative enactments,¹⁴ which were passed from 1988 to 1991, are currently in

5. Law of the Union of Soviet Socialist Republics on Cooperatives in the USSR, 22 *Vedomosti SSSR*, item 355 (1988) *reprinted in* *IZVESTIYA* (Novosti trans. with Coudert Brothers unofficial trans. of amendments) (enacted by the Supreme Soviet of the USSR, on May 26, 1988, and amended October 16, 1989 and June 6, 1990) [hereinafter Cooperatives Law].

6. The Fundamental Legislation of the Union of Soviet Socialist Republics and the Union Republics on Leasehold, 25 *Vedomosti SSSR*, item 481 (unofficial trans. 1989) (enacted by the Supreme Soviet of the USSR on November 23, 1989) [hereinafter Leasing Law].

7. The Fundamentals of Law on Land Ownership, 10 *Vedomosti SSSR*, item 129 (1990) *reprinted in* Olga Floroff and Susan Tiefenbrun, *New Fundamentals of Law on Land Ownership*, 4 *N.Y. INT'L L. REV.* 92, app. at 94-106 (1991) (principles of USSR and of Union and Autonomous Republics Legislation on Land) (enacted by the Supreme Soviet of the USSR on February 28, 1990) [hereinafter Land Law].

8. Law of the Union of Soviet Socialist Republics on Property in the USSR, 11 *Vedomosti SSSR*, item 164 (1990), *reprinted in* 42 *CURRENT DIG. SOVIET PRESS* No. 12 (1990) (enacted by the Supreme Soviet of the USSR on March 6, 1990) [hereinafter Property Law].

9. Union of Soviet Socialist Republics "Law On Enterprises in the USSR," *Izvestiia*, June 12, 1990, *reprinted in* *NAT'L AFFAIRS*, June 20, 1990 at 58-68 (enacted by the Supreme Soviet of the USSR on June 4, 1990) [hereinafter Enterprises Law]. The Enterprises Law should not be confused with the legislation of individual union and autonomous republics of the USSR, such as the Law of The Russian Soviet Federative Socialist Republic on Enterprises and Entrepreneurship. It should be noted that this Article will cover primarily all-union legislation and will not describe the laws of the union republics, although the authors recognize the growing importance of republican legislation.

10. Regulations Governing Joint-Stock and Limited-Liability Companies, 2 *Byull. Norm. Akt. SSSR*, item 590 (1991) (enacted by the Council of Ministers of the USSR, on June 19, 1990) [hereinafter Joint-Stock and Limited-Liability Companies Regulations]. It should be noted that Resolution No. 590 also enacted Regulations Governing Securities [hereinafter Securities Regulations].

11. Resolution No. 790 of the Council of Ministers of the USSR of August 8, 1990, "On Measures to Encourage the Establishment and Development of Small Enterprises," *Byull. Norm. Akt. SSSR*, item 790 (1990) *reprinted in* *EKON. I SH.* No. 33, August 1990 (Novosti trans.) [hereinafter Small Enterprises Resolution].

12. The Fundamentals of Legislation on Investment in the USSR, 51 *Vedomosti SSSR*, item 790 (Asset trans. 1990) (enacted by the Supreme Soviet of the USSR on December 10, 1990) [hereinafter Investment Law].

13. Foreign Investment Law, *supra* note 4.

14. The Joint-Stock and Limited-Liability Companies Regulations and the Small Enterprises Resolution were adopted by the executive body of the USSR, the Council

effect in the Soviet Union and form the framework for a system of privatization legislation granting privileges traditionally provided by market-based systems. Actual privatization laws were passed in the RSFSR and in the Soviet Union in July 1991.¹⁵ This Article examines the legal framework of the privatization laws. We shall illustrate the intertextuality of this body of Soviet legislation which is designed to ease the transition from a planned to a market economy. We hope to demonstrate that the style and language of these laws have changed significantly from 1988 to 1991 and that the stylistic changes reflect a movement away from Socialist ideology towards the adoption of democratic principles. The purpose of this investigation is to provide American businessmen and investors with substantive and procedural legal information required to effectuate Soviet-American ventures during this period of transition.

II. SOVIET ENTERPRISES LAW

On June 4, 1990, the Supreme Soviet of the USSR adopted the Law on Enterprises ("the Enterprises Law")¹⁶ in anticipation of the transition from a planned to a market economy¹⁷ and in furtherance of the concept of ownership promulgated in the Property Law.¹⁸ The jurisdictional reach of the Enterprises Law is analogous to our federal legislation and has implemented changes in the regulation of enterprises in the entire Soviet Union. The Enterprises Law has also clarified the legal status of the various types of enterprises, including state enterprises, which currently exist in the Soviet Union during the development of a "regulated market."¹⁹ The Enterprises Law is written in a style that is objective, apolitical and free of any association with Socialist ideology. It includes and expands provisions enacted by the Leasing Law,²⁰ the Land Law,²¹ and the Property Law,²² which preceded the Enterprises Law by only months.

The Enterprises Law is heavily influenced by property concepts that define and structure the nature of a Soviet enterprise. The Enterprises Law addresses several areas including: The creation of the

of Ministers of the USSR. Therefore, even though the above-stated documents are mandatory for execution, they are not regarded as laws, but as legislative enactments.

15. Law on Privatization of State and Municipal Enterprises in the RSFSR, SOV. ROSSIA, July 17, 1991, at 3 (enacted July 3, 1991); The Fundamental Principles of Destatization and Privatization of Enterprises, IZVESTIA AND SOV. ROSSIA, August 8, 1991, at 1 (enacted by the USSR Supreme Soviet July 1, 1991).

16. Enterprises Law, *supra* note 9.

17. *Id.* at preamble.

18. *Id.* at § I, art. 2, para. 1.

19. *Id.* at preamble.

20. *Id.* at § I, art. 2, para. 4; § III, art. 10, para. 5, art. 11, para. 1.

21. *Id.* at § II, art. 5, para. 4; § III, art. 11, para. 1.

22. *Id.*

enterprise and the procedure for its registration; the property of the enterprise; the management of the enterprise and self-management; the managerial, economic and social activity of the enterprise; the enterprise and the State; and, the liquidation and reorganization of the enterprise.²³ The Enterprises Law defines an enterprise in terms of property. An enterprise is an economically operating subject with the rights of an independent legal entity which, based on the use of property by its employees (i.e. "collective of employees," "working collective" or "labor collective"), "produces and sells products, performs work and renders services."²⁴

The Enterprises Law works integrally with the Property Law and classifies enterprises according to the type of ownership of the enterprise property. There are several categories of enterprises: individual and family enterprises based on the ownership of property by individual Soviet citizens or families;²⁵ collective enterprises such as production cooperatives, enterprises belonging to the cooperatives, joint-stock companies, partnerships, enterprises owned by public organizations and enterprises of religious organizations, all of which are based on the ownership of collective property;²⁶ and, state enterprises based on the ownership of state property.²⁷ Each of these forms of enterprise has the right to carry out foreign economic activity independently but in accordance with legislation of the USSR, union republics²⁸ and autonomous²⁹ republics.³⁰

The Enterprises Law states that all enterprises in the USSR must operate according to the rules set forth in their charters.³¹ The charters must be registered in accordance with the procedures set forth in section II, article 6, paragraph 1, of the law. This procedure is the equivalent of our state incorporation process. However, in the USSR many different forms of enterprises permitted by the Enterprises

23. Enterprises Law, *supra* note 9.

24. *Id.* at § I, art. 1, para. 1.

25. *Id.* at § I, art. 2, para. 1.

26. *Id.*

27. *Id.*

28. The Union of Soviet Socialist Republics consisted of 15 union republics of which the Russian Soviet Federative Republic (RSFSR) (The Russian Federation) is the largest. WEBSTERS NEW COLLEGIATE DICTIONARY 1488 (Henry B. Woolf ed., 1979). Since the Aug. 19, 1991 *coup*, three Baltic republics left the Union and seven republics seek independence.

29. Autonomous republics are territorial units within the union republics. There are twenty autonomous republics in the USSR and most of them are within the Russian Federation. Since the *coup* these numbers will change.

30. Enterprises Law, *supra* note 9, at § V, art. 28, para. 1.

31. *Id.* at § III, art. 9, para. 1.

Law must be registered, not just corporations.³² State registration of an enterprise is carried out by the executive committee of the regional, city or district Soviets of Peoples' Deputies "where the enterprise is located unless otherwise stipulated by legislative acts of the USSR and the union and autonomous republics."³³ Registration requires submission of certain documents relating to the enterprise including the written decision to create the enterprise,³⁴ the charter, and other documents set forth on a list drafted by the USSR Council of Ministers.³⁵

The Enterprises Law limits the participation by the state in the activities of the enterprise to the registration process. Any further interference by the state with the activities of a registered enterprise is forbidden, unless the state has a legal right to control the activity of the enterprise, as with state enterprises.³⁶ The enterprise may contest unauthorized state interference in a Soviet court of law or before the State Arbitration Board.³⁷ Moreover, a state agency must compensate any enterprise which suffers losses as a result of the unauthorized interference by the state.³⁸ This right also may be enforced through litigation in court or through arbitration.³⁹ This provision has produced an unexpected deluge of legal suits. Previously unthinkable legal actions are currently being brought against controlling state agencies, not only for the violation of law but for the improper discharge of the state agencies' functions. For example, during a recent routine check of a milk production facility, an employee of the State Standards Commission incorrectly graded the production output. An arbitration panel awarded the production facility a sum equal to the nonperformance payments incurred by the facility. Moreover, payment of the award was at the expense of the State Standards Commission.⁴⁰

III. SOVIET PROPERTY LAW

The USSR Law on Property ("the Property Law"),⁴¹ adopted in March 1990, provides the legal right to own property and establishes

32. *Id.* at § I, art. 2; § II, art. 6.

33. *Id.* at § II, art. 6, para. 1.

34. *Id.* at § II, art. 5, para. 1.

35. *Id.*

36. *Id.* at § VI, art. 30, para. 1.

37. *Id.* at § VI, art. 30, para. 2.

38. *Id.*

39. *Id.*

40. B.I. Puginsky, Deputy Chief State Arbiter of the Russian Federation, D.S.J., reported in *LAW AND ECON.* Nos. 1-2, (Postfactum, Moscow, 1991).

41. Property Law, *supra* note 8.

the legal status of property held by enterprises.⁴² The Property Law paves the way for the adoption shortly thereafter on June 19, 1990 of the Enterprises Law.⁴³

The categories of property in the Property Law closely parallels the types of enterprises listed in the Enterprises Law.⁴⁴ The Property Law defines four categories of property: 1) property of USSR citizens; 2) collective property; 3) state property; and, 4) property of joint enterprises and of foreign citizens, organizations and states.⁴⁵

Citizens' property, otherwise known as individual or family property, is created from the income produced by the workers of an enterprise or by the participation of workers in social production or by acquisition from inheritance.⁴⁶ Collective property is defined as "the property of leased enterprises, employee-owned enterprises (sometimes called collective enterprises) cooperatives, joint-stock companies, other companies and partnerships, economic associations, public organizations and other associations."⁴⁷ State property includes property of the Soviet Union, property of the union republics, autonomous republics, and autonomous provinces and regions.⁴⁸

Foreign citizens have the same rights to the ownership of property in the USSR as Soviet citizens.⁴⁹ Additionally, foreign legal entities have the right to own enterprises, buildings, structures and other assets located within the USSR for the purpose of carrying on business.⁵⁰ These rights were provided by the Property Law and further developed by the recently enacted Soviet Foreign Investment Law.⁵¹ However, it should be pointed out that implementation of the right of foreign legal entities to own property in the USSR has proven difficult in practice.

42. *Id.* at § II, art. 7 (Objects of Citizens' Right of Ownership); Article 10 (Collective Property); Article 24 (The Assets of a State-Owned Enterprise).

43. For a discussion of the Enterprises Law, see *supra* notes 16-40 and accompanying text.

44. Property Law, *supra* note 8, at § II, art. 7; Enterprises Law, *supra* note 9, § I, art. 2, para. 1.

45. Property Law, *supra* note 8, at § I, art. 4, para. 1.

46. *Id.* at § II, art. 6, para. 1.

47. *Id.* at § III, art. 10, para. 1.

48. *Id.* at § IV, art. 19.

49. *Id.* at § V, art. 28.

50. *Id.* at § V, art. 29.

51. For a discussion of the Foreign Investment Law, see *infra* notes 52-79, and accompanying text.

IV. THE SOVIET FOREIGN INVESTMENT LAW

The USSR Fundamentals of Legislation on Foreign Investment ("the Foreign Investment Law"),⁵² enacted in July 1991, provides foreign investors with the right to participate in the denationalization and privatization of Soviet industry⁵³ and the right to establish a wholly-owned foreign investment enterprise.⁵⁴ Foreign investors may acquire shares of stock in all-union, republican and municipal property, otherwise known as state enterprises,⁵⁵ only with the consent of the labor collective and with the approval of the State Property Fund of the USSR.⁵⁶ However, Soviet enterprises or citizens must first exercise their right of first refusal to acquire these shares of the state-owned property.⁵⁷

The Foreign Investment Law stipulates several permissible forms of foreign investment:

- (1) joint venture with Soviet legal entities and citizens;
- (2) one hundred percent wholly-owned foreign investment enterprise;
- (3) acquisition of property, including stocks and other securities;
- (4) acquisition of the right to use land and other natural resources; and,
- (5) other forms of investment established by agreement between Soviet legal entities and citizens.⁵⁸

Foreign investors have the right to invest in any form of Soviet economic activity, unless the activity is prohibited by USSR or republican law⁵⁹ or restricted for reasons of national security and defense.⁶⁰ For each of these investments, foreign investors enjoy "guarantees" against certain changes in either Soviet or republican legislation⁶¹ and "guarantees" against nationalization and expropriation.⁶² They also have the right to reimbursement in the event of termination by the state.⁶³ Foreign investments enjoy exemption from customs duties and import taxes.⁶⁴ However, foreign investments are subject to Soviet and republican tax laws.⁶⁵

Foreign investors may repatriate profits in convertible currency to the extent it was legally earned in connection with the investment.⁶⁶ Alternatively, profits earned by the enterprise may be reinvested

52. Foreign Investment Law, *supra* note 4.

53. *Id.* at § I, art. 4, para. 1.

54. *Id.* at § I, art. 3(b).

55. Property Law, *supra* note 8, at § IV, arts. 21, 22, 23.

56. Foreign Investment Law, *supra* note 4, at § I, art. 4, para. 2.

57. *Id.*

58. *Id.* at § I, art. 3.

59. *Id.* at § I, art. 6.

60. *Id.* at § II, art. 7.

61. *Id.* at § II, art. 9.

62. *Id.* at § II, art. 10, paras. 1, 2.

63. *Id.* at § II, art. 11.

64. *Id.* at § III, art. 26.

65. *Id.* at § III, art. 28.

66. Foreign Investment Law, *supra* note 4, at § II, art. 12.

within the territory of the USSR and used in accordance with legislative acts of the USSR and the republics.⁶⁷

The Foreign Investment Law reflects a new emphasis on the independence and influence of the republics. For example, a foreign investment may be structured in the form of a joint-stock company, a company with limited liability or any other form of enterprise that does not contradict the legislative acts of the USSR and the republics.⁶⁸ A foreign investment enterprise must first be registered (i.e. incorporated) according to procedures prescribed by the legislative acts of the republic in whose territory the enterprise is created.⁶⁹ However, requirements regarding registration and other foundation documents are established by legislative acts of the USSR and the republics.⁷⁰ A foreign investment enterprise has the right to create branches and affiliates within and without the territory of the Soviet Union in accordance with conditions established by the USSR and the republics.⁷¹

A foreign investment enterprise has the right to fix its own prices for the goods it produces by contractual agreement.⁷² However, the use of foreign currency by the enterprise is subject to Soviet legislation on currency regulation.⁷³ The enterprise has the right to export its own products and to import products, works and services for economic activity without a license.⁷⁴ A foreign investment enterprise may pledge the property of the enterprise as security for the payment of the debts of the enterprise or for performance of any other obligation.⁷⁵ A foreign investment enterprise also has the right to acquire securities⁷⁶ and the right to use land in accordance with the legislation of USSR and the republics.⁷⁷

The Foreign Investment Law further provides foreign investors with the right to explore, develop and utilize natural resources pursuant to a concession agreement between the foreign investor and the appropriate all-union and republican state agency.⁷⁸

67. *Id.* at § II, art. 13.

68. *Id.* at § III, art. 14, para. 1.

69. *Id.* at § III, art. 16, para. 1.

70. *Id.*

71. *Id.* at § III, arts. 17, 18.

72. *Id.* at § III, art. 22.

73. *Id.* at § III, art. 23.

74. *Id.* at § III, art. 24.

75. *Id.* at § III, art. 31.

76. *Id.* at § IV, arts. 36, 37.

77. *Id.* at § V, art. 38.

78. *Id.* at § V, art. 41.

Thus, the Foreign Investment Law is a positive step in the path of privatization because it permits the establishment of complete autonomous investment by foreign entities. While Soviet citizens need not invest at all in the enterprise, the establishment of a wholly-owned foreign investment will involve the presence of the Soviet State. There are many roadblocks to cross before foreign investment can experience the same independence enjoyed in a free market economy. Hidden state controls, the nonconvertibility of the rouble, limitations on the repatriation of profits in convertible currency, the failure to bring Soviet accounting principles up to the standards of generally accepted accounting principles⁷⁹ and the fear of the termination of the investment by the state must be eliminated by further legislation in order to facilitate foreign investment, maximize profits and reap the benefits of a truly free system of enterprise.

V. SOVIET ENTERPRISE TAX LAW

The Foreign Investment Law stipulates that foreign investment enterprises are subject to USSR and republican tax laws.⁸⁰ During the Summer of 1990, two new tax laws designed to enhance the establishment of privately-owned foreign investments were enacted in the USSR. The Law of the USSR on the Taxation of Enterprises, Associations and Organizations⁸¹ ("the Enterprise Tax Law") established the tax treatment of foreign and domestic legal entities engaged in commercial activity in the USSR. The Enterprise Tax Law followed the enactment on April 23, 1990 of a new Soviet tax law that established a tax on individuals.⁸²

The Enterprise Tax Law establishes a new tax on profits and is applicable to all legal entities conducting economic activity in the USSR, including foreign enterprises. A basic tax rate of forty-five percent normally applies to taxable profit payable into the all-union budget and the republican, autonomous and local budgets in the amounts of twenty-two percent, and up to twenty-three percent, respectively.⁸³

With respect to joint ventures, the Enterprise Tax Law makes significant changes to prior legislation that established tax rates from thirty percent to as low as ten percent if the joint venture was estab-

79. *Id.* at § III, art. 30.

80. Foreign Investment Law, *supra* note 4, at § III, art. 28.

81. Union of Soviet Socialist Republics Law "On the Taxation of Enterprises, Associations and Organizations in the USSR," 27 *Vedomosti SSSR*, item 522 (1990) [hereinafter Enterprise Tax Law].

82. See Union of Soviet Socialist Republics Law "On the Income Taxation of Citizens of the USSR, Foreign Citizens and Persons Without Citizenship," 19 *Vedomosti SSSR*, item 320 (1990).

83. Enterprise Tax Law, *supra* note 81, at art. 4.1.

lished in the Far East. Now, the thirty percent rate will apply only to the profits of those joint ventures in which the foreign participant has an interest exceeding thirty percent.⁸⁴ Joint ventures having foreign participation equal to or less than thirty percent are now taxed at the basic forty-five percent rate applicable to most other Soviet enterprises. This change is designed to offset the effect of foreign investors trying to avoid the mandatory sale of hard currency by enterprises and the Gorbachev tax by holding a minimum share in the joint venture.⁸⁵ An investment which has less than thirty percent foreign ownership will avoid the mandatory sale of hard currency and the Gorbachev tax, but will not benefit from the favorable tax rate of thirty percent and the tax holiday.

The tax holiday, which previously exempted all joint ventures from tax on profits for the first two years of the receipt of declared profits, now applies only to joint ventures engaged in material production and to ventures in which the share of the foreign participant exceeds thirty percent.⁸⁶

The Enterprise Tax Law also imposes a turnover tax (similar to a value added tax) on Soviet enterprises, including joint ventures and production cooperatives, that produce and sell goods subject to the tax. The turnover tax is based upon the difference between the retail and wholesale prices of enterprises.⁸⁷ The turnover tax applicable to joint ventures ranges from fifteen percent to ninety percent as established by further legislation.⁸⁸

The Enterprise Tax Law imposes a withholding tax at a rate of fifteen percent upon income received by enterprises from the holding of stocks, obligations (bonds) and other securities. The tax is even imposed on profit distributions received by Soviet joint venture participants and repatriated profit distributions of foreign joint venture participants.⁸⁹ This tax reduces the previously applied twenty percent withholding tax on repatriated profit distributions, but it is now

84. *Id.* at art. 5.1.

85. See *infra* notes 329-38 and accompanying text for discussion of "Gorbachev tax."

86. Enterprise Tax Law, *supra* note 81, at art. 6.6(a).

87. *Id.* at art. 15.

88. Decree of the Council of Ministers of the USSR: On the Establishment of Rates for 1990 of the Tax on Exports and Imports and the Turnover Tax for Joint Ventures Established in the USSR with the Participation of Soviet Legal Entities and Foreign Legal Entities and Citizens, No. 815, app. 2 (August 13, 1990) cited in Hogan, *New Soviet Tax and Companies Legislation in the USSR*, 16 REV. OF SOCIALIST LAW, 351, 354 n.16 (1990).

89. Enterprise Tax Law, *supra* note 81, at arts. 31.1, 31.2.

payable in the currency in which the transfer is made, not in roubles.⁹⁰

The Enterprise Tax Law recognizes certain internationally accepted practices such as loss carry forwards for joint ventures having more than thirty percent foreign ownership.⁹¹ This provision, in conjunction with the favorable tax rate for foreign investments having more than thirty percent foreign participation, should promote economic reform. However, the application of an excess profits tax to profits earned in excess of levels defined with respect to the performance of low-functioning state enterprises is likely to hinder rather than promote economic reform.⁹²

VI. SOVIET PROPERTY LAW AND FORMS OF PROPERTY OWNERSHIP

The Property Law⁹³ designates four main forms of property ownership existing in the USSR and echoes the types of enterprises provided for in the Enterprises Law: ownership by individual Soviet citizens, ownership by the state, ownership by a collective entity⁹⁴ and ownership by foreign states, international organizations, foreign citizens and foreign entities.⁹⁵ The Property Law also states that union republics and autonomous republics may have the right to own other forms of property not mentioned in the Property Law, but otherwise provided by legislative acts of the union and autonomous republics.⁹⁶

It should be noted that political and legal changes in the USSR have resulted in a much higher level of independence of the union and autonomous republics from the Soviet Union.⁹⁷ Therefore, lawyers and businessmen entering into business transactions with Soviet legal entities should always consult the laws of the union republics and the autonomous republics in which the legal entity is situated, in addition to the federal laws governing the transaction.⁹⁸

90. *Id.* at art. 31.2.

91. *Id.* at art. 6.6(c).

92. See Hogan, *New Soviet Tax and Companies Legislation in the USSR*, 16 REV. OF SOCIALIST LAW, 351, 357 (1990).

93. Property Law, *supra* note 8.

94. *Id.* at § I, art. 4, para. 1.

95. *Id.* at § I, art. 4, para. 1(2).

96. *Id.* at § I, art. 4, para. 3. This provision has been utilized by the recently enacted RSFSR Law on Property, *supra* note 2, at § II, art. 10, para. 1. Section II of this law is entirely devoted to private ownership rights of individuals, legal entities, joint ventures and foreign citizens.

97. Comparing the Property Law of the USSR and the RSFSR Law on Property, one will notice that the RSFSR Law on Property legalizes private ownership, including private ownership of land parcels, whereas the USSR Property Law does not grant such a right. See RSFSR Law On Property, *supra* note 2, at § II, art. 10, para. 1. Moreover, the USSR Land Law expressly prohibits selling, donating, mortgaging and the unauthorized exchange of parcels of land. Land Law *supra* note 7, at § XIV, art. 53.

98. As an example, we can refer to the RSFSR Law on Property: "Property . . .

The relationship between the central government and the republics was to be governed by a Union Treaty. To replace the Union Treaty that was destroyed by the *coup*, a draft of a new economic pact was signed on October 18, 1991 by eight republics. Later the Ukraine and Moldavia joined the draft economic pact. A final agreement has not yet been reached.

This agreement is an economic pact which is designed to create a free-market zone in place of the former command economy. It provides guarantees for the free movement of goods and services within the common economic area; a commitment by the signatory republics to the establishment of a market economy based on private property, a unified banking system, currency reforms dependent on the ruble, and a union budget. These provisions will be implemented by the newly formed economic committee, banking committee, and arbitration agency, the latter designed to resolve interrepublican differences. The general principles of this economic agreement control in cases of a conflict with republican laws.

In addition to the economic pact, on November 14, 1991 President Mikhail S. Gorbachev and the leaders of seven republics agreed to work toward a new confederated "Union of Sovereign States," with central authorities exercising powers delegated by sovereign republics. Georgia, the Ukraine and Moldavia declined to take part in this meeting held in Novo Ogaryovo, the very site at which the republic leaders first met in April to shape a new association and to draft a union treaty. Armenia and Uzbekistan were also unavoidably absent from this meeting. This treaty will probably describe the shape of the new political union and the relationships among the central government and the republics.

[rights on land], other natural resources, . . . [capital assets, consumer goods] and other [types of] property [within] the territory of the RSFSR [are] regulated by the laws of the RSFSR and [] its republics and [by the] acts of local Soviets of Peoples' Deputies, issued within [the limits of their authority . . .]" RSFSR Law on Property, *supra* note 2 at § I, art. 1, para. 1. It further follows: "[All-union] legislation on property [applies] to the territory of RSFSR [in accordance with] the [Law of] RSFSR '[o]n application of USSR laws within the territory of RSFSR.'" *Id.* at para. 3; therefore, the application of federal laws is restricted by the republican laws. Boris Yeltsin's recent decree declaring all property within the RSFSR to belong to the RSFSR eradicates the conflict of federal and republican laws which may have existed with respect to property ownership. The problem of serious discrepancies between republican and all-union laws was expected to be resolved by the all-union treaty, which was to be signed on the eve of the *coup* in the USSR. The treaty was supposed to clarify the jurisdictional inconsistencies between all-union legislation and republican legislation. Since the *coup*, which destroyed the union treaty an Economic Pact has been drafted and a draft of a new Union Treaty has been signed by seven republics.

VII. SOVIET PROPERTY LAW AND OWNERSHIP OF PROPERTY BY STATE ENTERPRISES

A state enterprise does not "own" its property in the same way that Soviet citizens "own" property pursuant to the Property Law.⁹⁹ According to the Property Law, an owner possesses, utilizes and disposes of property belonging to him "as he sees fit" and has the right to do anything with his property that does not violate the law.¹⁰⁰ Section II, article 6, paragraph 4, of the Property Law provides Soviet citizens with the right to lifelong "use" of land and the right of "inheritance," as permitted by law.¹⁰¹ The Property Law also provides citizens with the right to "own" certain property for the purposes of farming, and individual or other forms of business activity.¹⁰² Section II, article 7, paragraph 2, further provides that after acquisition of such property, a citizen has the right to dispose of it as he sees fit by sale, inheritance, lease, or any other form of activity not in conflict with the law.¹⁰³ Thus, the Property Law greatly expands the definition of property ownership to include the right to dispose of and sell property owned by Soviet citizens. The sale or disposition of land from one Soviet citizen to another was formerly limited by article 25 of the Land Law which provided only a limited right to the disposition of land other than by inheritance by a farmer who, upon reaching retirement age or in the case of his disability, could transfer his land to those members of his family participating in agricultural activity.¹⁰⁴

Ownership of property by a state enterprise is defined in the Property Law as "complete economic control."¹⁰⁵ This is a new type of legal right closely approaching the right of ownership. The right of "complete economic control" consists of three different rights: the right to possess property; the right to use property; and, the right to dispose of property.¹⁰⁶ The rules governing the right of ownership¹⁰⁷ also apply to the right of "complete economic control,"¹⁰⁸ "unless otherwise stipulated by legislative acts of the USSR, and of union and

99. Property Law, *supra* note 8, at § II, art. 7, para. 1.

100. *Id.* at § I, art. 1, para 2.

101. *Id.* at § II, art. 6, para. 4.

102. *Id.* at § II, art. 7, para. 1.

103. *Id.* at § II, art. 7, at para. 2.

104. Land Law, *supra* note 8, at § IV, art. 25.

105. Property Law, *supra* note 8, at § IV, art. 24, para. 1. The official translation of this law calls this right "complete economic control." 42 CURRENT DIG. OF THE SOV. PRESS No. 12 (1990). The authors disagree with this translation because control imposed by the state on state-owned enterprises is too heavy to characterize it as "complete economic control." It would be more accurate to translate that term into English as "economic utilization."

106. *Id.* at § IV, art. 24, para. 1(2).

107. *Id.* at § I, art. 1, paras. 1-6.

108. *Id.* at § IV, art. 24, para. 1(3).

of autonomous republics."¹⁰⁹ The state enterprise has the right to maintain complete economic control over its property, but that right is carefully controlled by certain state bodies. For example:

State bodies in charge of governing state property will decide on: 1) the creation of an enterprise, 2) the determination of its goals, 3) the reorganization and liquidation of the enterprise and 4) will exercise control over the efficiency of the utilization and safety of property entrusted to the state enterprise.¹¹⁰

In addition, a state enterprise also has a complex form of dependency on the state with respect to the ownership and distribution of foreign currency earned by the enterprise.¹¹¹

VIII. SOVIET PROPERTY LAW AND FORMS OF PRIVATELY OWNED ENTERPRISES

The Property Law lists privately owned enterprises as certain small enterprises,¹¹² collective enterprises,¹¹³ cooperatives and enterprises owned by cooperatives,¹¹⁴ economic partnerships,¹¹⁵ joint-stock companies and companies with limited liability¹¹⁶ and enterprises owned by religious organizations.¹¹⁷

Small enterprises for trade, consumer service, public food service and other areas of business activity may be owned by individuals, families, or groups of persons participating in economic activity together.¹¹⁸ All other forms of privately owned enterprises are based on collectively owned or jointly owned property.¹¹⁹

A. Small Enterprises and the Soviet Small Enterprises Resolution

Resolution number 790 on Measures to Encourage the Establish-

109. *Id.*

110. *Id.* at § IV, art. 24, para. 2.

111. See discussion of "Leasehold Enterprises and Foreign Economic Activity," *infra* notes 325-28 and accompanying text.

112. Property Law, *supra* note 8, at § II, art. 8, para. 1; Enterprises Law, *supra* note 9, at § I, art. 2, para. 3; Small Enterprises Resolution, *supra* note 11.

113. Property Law, *supra* note 8, at § III, art. 10; Enterprises Law, *supra* note 9, at § I, art. 2, para. 1(3).

114. Property Law, *supra* note 8, at § III, art. 13; Enterprises Law, *supra* note 9, at § I, art. 2, para. 1.

115. Property Law, *supra* note 8, at § III, art. 14; Enterprises Law, *supra* note 9, at § I, art. 2, para. 1.

116. Property Law, *supra* note 8, at § III, art. 15; Enterprises Law, *supra* note 9, at § I, art. 2, para. 1.

117. Property Law, *supra* note 8, at § III, art. 18; Enterprises Law, *supra* note 9, at § art. 2, para. 1.

118. Small Enterprises Resolution, *supra* note 11, at para. 4.

119. Enterprises Law, *supra* note 9, at § I, art. 2, para. 1(3).

ment and Development of Small Enterprises (“the Small Enterprises Resolution”)¹²⁰ was enacted by the Council of Ministers of the USSR on August 8, 1990. The language of this body of law clearly reflects a desire to transform the planned economy into a “regulated market” economy.¹²¹ This transition to a free market economy will provide freedom of choice by the swift creation of a network of small-scale enterprises.¹²² The stated purpose of this resolution is to encourage competition¹²³ and to speed up economic reforms.¹²⁴

In conformity with the definition of an enterprise set forth in the Enterprises Law,¹²⁵ the Small Enterprises Resolution provides that small enterprises may be established in any sector of the economy and in a form that depends on the type of property owned by the enterprise.¹²⁶ A small enterprise can consist of as many as two hundred or as few as fifteen persons.¹²⁷

In order to create a small enterprise, the founders must draft a statute (charter) indicating its name, location, nature of its activity, purpose, administrative control, procedure of the formation of its property, and other corporate matters.¹²⁸ A small enterprise must be registered in accordance with procedures outlined in the Small Enterprises Resolution.¹²⁹ Small joint enterprises set up in the Soviet Union with the participation of foreign persons and Soviet legal entities are subject to Soviet Joint Venture Laws.¹³⁰

The interplay between the state and the privately owned small enterprise described in the Small Enterprises Resolution appears quite favorable to the establishment and development of private enterprise in the Soviet Union. For example, Ministries of the USSR, governments of the Union and autonomous republics, and local governments have been given directives to assist the establishment of small enterprises. In particular, they have been directed to assist enterprises in acquiring materials especially for the production of consumer goods.¹³¹ In addition, the state has been directed to assist small enterprises by providing consumer services, “boosting the production of building materials, carrying out research and development in new fields and ensuring the fast use of the research results.”¹³²

120. Small Enterprises Resolution, *supra* note 11.

121. *Id.* at Preamble.

122. *Id.*

123. *Id.*

124. *Id.* at para. 1.

125. Enterprises Law, *supra* note 9, at § I, art. 1, para 1; *see supra* notes 16-40.

126. Small Enterprises Resolution, *supra* note 11, at para. 2.

127. *Id.* at para. 3.

128. *Id.* at para. 5.

129. *Id.*

130. *Id.* at para. 9.

131. Small Enterprises Resolution, *supra* note 11, at para. 1.

132. *Id.*

The state also continues to provide workers of small enterprises with health and social insurance as well as social security, but the small enterprise must pay the premiums.¹³³ The national ministries and government departments, as well as the governments of the union and autonomous republics, local governments and state enterprises are encouraged to cooperate actively with and provide assistance to the unions and other organizations uniting small enterprises.¹³⁴

The purpose of this state assistance is to encourage the establishment of small enterprises and to help them tackle regional priority problems that have plagued the development of foreign investments in the past.¹³⁵ Forms of state assistance to small, private enterprises include the establishment of national, republican and regional funds to finance these enterprises.¹³⁶

A small enterprise may be created in three ways. It may be created in the first instance as a small enterprise in accordance with the procedures set forth in the Small Enterprises Resolution.¹³⁷ Alternatively, a small enterprise may be created from a unit of a state enterprise by a process involving the initial leasing of the small unit of the state enterprise by a labor collective which has the option to buy the resulting small enterprise.¹³⁸ The third manner in which a small enterprise may be created is through an initial buy-out of a unit of a state enterprise by a labor collective which unit is later transformed into a small privately owned enterprise.¹³⁹

B. Soviet Property Law and Collective Enterprises

The Property Law establishes a new system of legal rights and relations with respect to the property of employee-owned enterprises, otherwise known as collective enterprises.¹⁴⁰ A collective enterprise is an enterprise in which assets are collectively owned by its employees.¹⁴¹ The collective enterprise is created when assets of a state enterprise are turned over to a group of employees, or when leased assets are purchased by the group of employees, or when assets are

133. *Id.* at para. 7.

134. *Id.* at para. 10.

135. *Id.*

136. *Id.* at para. 11.

137. Small Enterprises Resolution, *supra* note 11, at para. 4.

138. For a discussion of this transformation in "The Mechanisms of Transition from State to Private Enterprise," see *infra* notes 254-348.

139. *Id.*

140. Property Law, *supra* note 8, at § III, art. 12, para. 1.

141. *Id.*

acquired collectively by some other method provided by law.¹⁴²

The Enterprises Law also provides for the creation of a collective enterprise by employees as a result of the separation of one or several structural subdivisions of a given division of the enterprise, provided that the owner of the property of the enterprise agrees to the separation.¹⁴³ In this instance, the creation of a collective enterprise is realized when some of the assets of an enterprise are turned over to a group of employees or are bought by the collective. This form of acquisition paves the way for the transformation of part of a state enterprise into a privately held small enterprise.¹⁴⁴

The economic structure of a collective enterprise is outlined in article 12 of the Property Law which states: "The assets of an employee-owned enterprise, including the output produced and income received by the enterprise, are the common property of the labor collective."¹⁴⁵ The initial and continued contribution of individual employees constitutes part of the assets of the collective enterprise.¹⁴⁶

Interest is calculated and paid on each employee's contribution to the collective enterprise in amounts determined by the labor collective on the basis of the enterprise's economic performance.¹⁴⁷ Employees who terminate their working relationship with the enterprise, as well as the heirs of a deceased employee, receive payments equal to the value of their contributions.¹⁴⁸ When the employee-owned collective enterprise is liquidated, the value of the contributions is paid to the employees (or their heirs) from the assets remaining after accounts have been settled with respect to the budget, the banks and the enterprise's other creditors.¹⁴⁹

Article 12 of the Enterprises Law provides only a mere outline of the structure of a collective enterprise. These provisions should be developed and amended by further all-union legislation and by legislation of the union and autonomous republics.¹⁵⁰

The description of a collective enterprise provided in article 12 of the Property Law resembles a close corporation whose stock is held

142. *Id.* at § III, art. 12, para. 1(1).

143. Enterprises Law, *supra* note 9, at § II, art. 5, para. 2.

144. Small Enterprises Resolution, *supra* note 11, at para. 4.

145. Property Law, *supra* note 8, at § III, art. 12, para. 1.

146. *Id.* at § III, art. 12, para. 2.

147. *Id.*

148. *Id.* at § III, art. 12, para. 2(4).

149. *Id.*

150. *See, e.g.*, Enterprises Law, *supra* note 9, at § III, art. 12, para. 2. The Law of RSFSR "On Enterprises and Entrepreneurship," unfortunately does not give any additional information on the subject of collective enterprises. This law does not even specify collective enterprises as one of the permissible forms of enterprises in the Russian Federation. The only form of enterprise stipulated by the law of the Russian Federation that comes close to collective enterprises is the joint-stock company, but there are significant discrepancies between these two forms of enterprise. Law of the Russian Soviet Federative Socialist Republic "On Enterprises and Entrepreneurship," 30 Vedomosti RSFSR item 418 (Novosti trans. 1990) (enacted by the Supreme Soviet of the RSFSR on December 25, 1990) [hereinafter RSFSR Law on Enterprises].

by its directors, officers and employees. The property of the collective enterprise, including its production and profits, belongs to the group of employees that created the collective enterprise.¹⁵¹ Employees who own this enterprise are analogous to the shareholders of a closely held corporation, and the specific type of stock held by the employees is referred to as "shares."¹⁵²

Stocks and securities are regulated by Securities Regulations¹⁵³ passed almost simultaneously with the Enterprises Law and Joint-Stock and Limited-Liability Companies Regulations.¹⁵⁴ The Securities Regulations list the types of shares that may be issued: labor collective shares (i.e. shares issued by a group of employees), shares issued by the enterprise, and shares issued by joint-stock companies which may be preferred stock or common stock.¹⁵⁵ Labor collective shares "shall be floated among the workers of a given enterprise and shall not be sold or otherwise transferred to citizens not belonging to the work force of the said enterprise."¹⁵⁶ Shares must be registered with special financial organs of the USSR in accordance with the Rules of the Registration of Stock and Bonds.¹⁵⁷ Each share of stock produces a dividend. Dividends of labor collective shares are paid out of funds channelled for their consumption.¹⁵⁸

The Property Law refers to an individual employee's contribution and provides for the payment of "interest" on his investment which is calculated by the labor collective on the basis of the economic activity of the enterprise.¹⁵⁹ When an employee-shareholder terminates his employment relationship or dies, he or his distributees or beneficiaries may redeem his shares for their cost value.¹⁶⁰ However, it is unclear whether the same redemption is available if the employee retires. As long as it is not specifically stipulated by the law, it is presumably possible to provide for this right in the charter of the collective enterprise. If the collective enterprise is liquidated, all shares may be redeemed by the employee or by his heirs only after

151. Property Law, *supra* note 8, at § III, art. 12, para. 1(2).

152. Securities Regulations, *supra* note 10, at § II, art. 4(a)(2).

153. *Id.*

154. See Securities Regulations, *supra* note 10, and Rules of Registration of Stock and Bonds, Buill. Norm. Akt. SSSR No. 121 (1990) (endorsed by the Deputy Minister of Finances of the USSR).

155. Securities Regulations, *supra* note 10, at § II, art. 4(a)-(c).

156. *Id.* at § II, art. 4(a)(2).

157. Rules of Registration of Stock and Bonds, *supra* note 154, at art. 2.

158. Securities Regulations, *supra* note 8, at § I, art. 2, para. 11.

159. Property Law, *supra* note 8, at § III, art. 12, para. 2(3).

160. *Id.* at § III, art. 12, para. 2(4).

all the enterprise's obligations and debts have been fully satisfied.¹⁶¹

C. *Soviet Cooperatives Law and Cooperatives*

The Law of the Union of Soviet Socialist Republics on Cooperatives ("the Cooperatives Law")¹⁶² defines a cooperative as an organization of citizens of the USSR who have voluntarily united for the purpose of conducting joint economic activities based on property which the membership owns or has leased either for a fee or free of charge.¹⁶³ The cooperative is designed to promote independence, self-management, self-financing and the material interest of the cooperative members, but the interests of the cooperative must be combined with the interests of society.¹⁶⁴

The concept of the cooperative is firmly entrenched in the ideology of socialism, and the Cooperatives Law, which was enacted very early in the era of Glasnost, bears the linguistic traces of this ideology. The democratization of the socialist system was clearly in the air in 1988 when the Cooperatives Law was passed, and the language of the law reflects this duality: "The cooperative bases its activity on the principles of . . . a combination of private, collective and state interests, economic independence, material incentive and social justice, and direct participation by the members of the cooperative in the management of its affairs on the basis of cooperative democracy and socialist laws."¹⁶⁵ The Cooperatives Law states that the cooperative is the primary link in the system of cooperation in the USSR, and the cooperative is meant to "take an active part in the economic and social development of the country and in the attainment of the uppermost goals of 'social production under socialism.'"¹⁶⁶

Cooperatives enjoy the kind of independence and self-management normally associated with free enterprise, but they are also accorded the benefits of the socialist system including legal protection by the state.¹⁶⁷ Thus, a cooperative has the right to pass any decision relating to the internal structure and function of the cooperative, provided these decisions do not run counter to existing legislation or to the statutes (charter) of the cooperative.¹⁶⁸ The cooperative manages its own affairs and owns its own property, but cooperative property may be confiscated by the state by ruling of a court of law or by an

161. *Id.*

162. Cooperatives Law, *supra* note 5.

163. *Id.* at § II, art. 5, para. 1.

164. *Id.*

165. *Id.* at § II, art. 10, para. 1.

166. *Id.* at § II, art. 5, para. 2.

167. *Id.* at § II, art. 8, para. 1.

168. *Id.* at § II, art. 5, para. 3, & art. 11, para. 2. The statutes must be adopted by a general meeting of those citizens wishing to establish the cooperative. *Id.*

arbitration tribunal.¹⁶⁹ Absent such a ruling, any interference in the activity of the cooperative by state authorities is strictly prohibited by law. In the event a state authority exceeds its jurisdiction or infringes on the rights of the cooperative, the cooperative shall have recourse in a court of law or in an arbitration tribunal to declare the act invalid.¹⁷⁰ Moreover, losses resulting from such state interference shall be compensated by the state.¹⁷¹

The relationship of the state to the cooperative is a delicate balance designed to provide managerial freedom to the cooperative without losing the state's legal protection and social benefits. The cooperative has the right to manage its property¹⁷² and "to sell or give to other enterprises, organizations, agencies and citizens . . . for temporary use buildings, structures, equipment, transportation facilities, implements, raw materials and other assets" of the cooperative.¹⁷³ The cooperative may also dispose of its own usable cooperative property by entering into a contract for the sale of material and financial resources to the other enterprises.¹⁷⁴ "The cooperative bears independent liability [for] all its property, including fixed assets. The state is not liable for the cooperative's commitments."¹⁷⁵ Thus, cooperative property is a ground-breaking form of socialist ownership which paves the way toward the establishment of a system of private enterprise.

The Cooperatives Law divides all cooperatives into two categories. A cooperative will either be a production cooperative or a consumer cooperative.¹⁷⁶ Production cooperatives produce goods, products and works which the cooperatives sell to consumers.¹⁷⁷ Production cooperatives may perform services in several fields of economic activity including, but not limited to, the following: manufacturing agricultural products, industrial goods or consumer goods; processing secondary raw materials, industrial goods and by-products; repairing and maintaining equipment; catering; and performing travel, legal and scientific research.¹⁷⁸ Production cooperatives have the authority to

169. *Id.* at § II, art. 10, para. 1.

170. *Id.* at § II, art. 10, para. 2.

171. *Id.* at § II, art. 10, para. 2(3).

172. Cooperatives Law, *supra* note 5, at § II, art. 8, para. 2.

173. *Id.* at § II, art. 8, para. 3.

174. *Id.*

175. *Id.* at § II, art. 8, para. 4.

176. *Id.* at § I, art. 3, para. 2(1).

177. *Id.* at § I, art. 3, para. 2(2).

178. *Id.* at § I, art. 3, para. 2.

use their own property or to lease property from state-owned enterprises or from individual citizens.¹⁷⁹ Soviet law requires a cooperative to “augment, effectively use and protect” all property it owns and for which it holds title.¹⁸⁰ This feature of the use, disposition and lease of property in the Cooperatives Law anticipates the passage of the Leasing Law, the Land Law, and the Property Law in 1989.

Consumer cooperatives provide commercial and consumer services to members and other consumers.¹⁸¹ Consumer cooperatives also tend to the needs of the cooperative members regarding housing, out-of-town cottages, gardening areas, garage and parking lots for motor vehicles, and socio-cultural and other recreational activities.¹⁸² Such consumer cooperatives may carry out various production functions and, thus, act as a mixed cooperative.¹⁸³ The members of the cooperative who perform tasks for the cooperative constitute the “work collective,” otherwise known as the labor collective.¹⁸⁴

The property of the cooperative consists of the monetary and material contribution of the membership, the end product or output of the cooperative, the proceeds from the sale of the output, and the proceeds from the sale of bonds and other cooperative securities and bank credits.¹⁸⁵ The property of the cooperative includes its means of production and all other property needed for the fulfillment of its statutory obligations.¹⁸⁶ The product produced by the cooperative and the distribution of the income from the sale thereof must be designated in the charter of the cooperative.¹⁸⁷

A cooperative may enter into agreements with other state-owned, collectively owned and individually owned enterprises.¹⁸⁸ In addition, production cooperatives may create joint ventures with legal entities and individuals of capitalist countries.¹⁸⁹ The Cooperatives Law does not prohibit participation by foreign citizens and foreign legal entities in Soviet cooperatives.¹⁹⁰

In order to establish a cooperative, a charter must be drafted and

179. Cooperatives Law, *supra* note 5, at § II, art. 9; *see also* Property Law, *supra* note 8, at § III, art. 13; Leasing Law, *supra* note 6, at § I, cl. 4-8.

180. Cooperatives Law, *supra* note 5, at § II, art. 7, para. 4.

181. *Id.* at § I, art. 3, para. 2(6).

182. *Id.*

183. *Id.*

184. *Id.* at § 1, art. 6; *see discussion of “Leasing Law and Leased Enterprise” infra* notes 287-324.

185. *Id.* at § II, art. 7, para. 2; *see also* Property Law, *supra* note 8, at § III, art. 13, para. 1.

186. Cooperatives Law, *supra* note 5, at § II, art. 7, para. 1.

187. *Id.* at § II, art. 11, para. 2.

188. *Id.* at § III, art. 17, para. 3.

189. *Id.* at § III, art. 28, para. 4.

190. *Id.*

registered.¹⁹¹ The cooperative must be registered according to procedures outlined in the Cooperatives Law.¹⁹² The supreme body of cooperative management is the general meeting, where voting takes the form of one member, one vote.¹⁹³ Day-to-day management is conducted by the cooperative board.¹⁹⁴

Cooperatives may be liquidated voluntarily by the decision of a general meeting.¹⁹⁵ The state also has the right to terminate the cooperative:

The executive committee of the local Soviet of Peoples' Deputies that registered the cooperative has the right to terminate its activity for three reasons: (1) should the cooperative fail to start its economic and production activity within one year following registration or fail to resume activity de facto within one year following the filing of the last declaration of its profits; (2) should the cooperative be chronically insolvent (over six months); (3) should the cooperative, in spite of a warning repeatedly or blatantly violate the law regulating the activity of cooperatives.¹⁹⁶

Upon termination, the cooperative must settle obligations with respect to the budget, banks and other lenders after which the remaining property shall be distributed among the members of the cooperative.¹⁹⁷

D. Soviet Property Law and an Economic Partnership

An economic partnership is a legal entity composed of enterprises, institutions, organizations, state agencies, or citizens¹⁹⁸ created for the purpose of engaging in entrepreneurial activity and generating profit as a result of investments made by the partners.¹⁹⁹ Partnership investments may be in the form of fixed assets (assets which are used over a period of longer than one year and which preserve their tangible form, like buildings, structures, and equipment), working capital (raw and other materials, semifinished goods, finished products, and financial resources allocated for operational needs), cash securities and the right to the "use" of property.²⁰⁰

Article 14, paragraph 3, of the Property Law refers to enterprises, organizations, and state organs as the participants of economic part-

191. *Id.* at § II, art. 11, para. 3.

192. *Id.*

193. *Id.* at § II, art. 14, para. 2.

194. *Id.* at § II, art. 14, para. 4.

195. *Id.* at § II, art. 15, para. 1.

196. *Id.* at § II, art. 15, para. 2.

197. *Id.* at § II, art. 15, para. 3.

198. Property Law, *supra* note 8, at § III, art. 14, para. 3.

199. *Id.* at § III, art. 14, para. 1.

200. *Id.* at § III, art. 14, para. 2.

nerships. Private citizens may also participate "unless otherwise stipulated by legislative acts of the USSR or union and autonomous republics."²⁰¹ Currently there are no specific provisions for the legal rights and obligations of economic partnerships in the all-union legislation; however, republican legislation has begun to provide a legal framework for economic partnerships.²⁰²

E. Soviet Joint-Stock and Limited-Liability Companies Regulations

On June 19, 1990, the Council of Ministers of the USSR adopted Regulations Governing Joint-Stock and Limited-Liability Companies ("the Joint-Stock and Limited-Liability Companies Regulations").²⁰³ The Joint-Stock and Limited-Liability Companies Regulations correspond to United States' Business Corporation Law, defining the structure and functions of "companies." A joint-stock company and company with limited liability are defined together as "organizations established upon agreement between juridical persons and individuals by way of joint investment for the purposes of engaging in commercial activities."²⁰⁴ Although similar in nature, a joint-stock company is established through a charter, while a limited-liability company requires both an agreement and a charter.²⁰⁵ For both the joint-stock company and company with limited liability, only the entity is liable for its debts, and participants of these companies cannot be held personally liable.²⁰⁶

1. Joint-Stock Companies

A joint-stock company is defined as a company that is liable only to the extent of its assets and has its capital divided into a finite number of shares of stock, each bearing a nominal value.²⁰⁷ A joint-stock company cannot be formed unless it possesses a minimum level of capital assets: 500,000 roubles.²⁰⁸ Participants in the joint-stock company receive shares, referred to as "securities," entitling the holder to participate in the management of the company and to receive a share in its profits.²⁰⁹ Shares may be paid for in roubles, foreign cur-

201. *Id.* at § III, art. 14, para. 3.

202. *See, e.g.*, RSFSR Enterprises Law, *supra* note 150, at ch. II, art. 9-10.

203. Joint-Stock and Limited-Liability Companies Regulations, *supra* note 10. At the same time the Council of Ministers of the USSR approved a resolution entitled, "On the Adoption of the Regulations Governing Joint-Stock and Limited-Liability Companies and the Regulations Governing Securities." [hereinafter Joint-Stock and Limited-Liability Companies Resolution].

204. Joint-Stock and Limited-Liabilities Companies Regulations, *supra* note 10 at § I, art. 1.

205. *Id.* at § I, art. 7.

206. *Id.* at § I, art. 22.

207. *Id.* at § II, art. 30, para. 1.

208. *Id.* at § II, art. 30, para. 2.

209. *Id.* at § II, art. 31.

rency, or by transfer of assets to the company.²¹⁰ Shares in the company may be acquired by shareholders either directly or via a banking establishment.²¹¹ Shareholders are entitled to receive a share certificate after the company receives full payment of the value of the shares of stock purchased.²¹²

"A joint-stock company may issue registered shares and bearer shares."²¹³ Common stock is referred to as "ordinary shares," and preferred stock is referred to as "preference shares."²¹⁴ Preference shares, like our preferred stock, give the preferred stockholders priority dividend right.²¹⁵ A joint-stock company may issue both bearer or registered bonds to companies or individuals in order to raise additional capital.²¹⁶

To establish a joint-stock company, the founders of the company must draft "a declaration of their intent to establish the company, to conduct a share subscription and constituent assembly, and to effect state registration of the company."²¹⁷ Only Soviet companies and individuals may be founders of a joint-stock company.²¹⁸ Once the joint-stock company is founded, "the shares may be apportioned by way of open subscription or of distribution among the founders."²¹⁹ By issuing shares equal to the full value of the assets, a state enterprise may be converted into a joint-stock company.²²⁰

The functions of the joint-stock company are carefully stipulated in the Joint-Stock and Limited-Liability Companies Regulations. The joint-stock company must conduct meetings of a constituent assembly whose functions include the following: Establishing the joint-stock company; endorsing the charter; deciding which subscriptions that exceed the quantity announced to accept or refuse; reducing the size of the company's statutory capital; electing a council of the joint-stock company, the executive and supervisory bodies; endorsing preformation transactions by the founders; determining the founders' rights and obligations; and, valuing noncash contributions.²²¹

210. *Id.*

211. *Id.* at § II, art. 39.

212. *Id.* at § II, arts. 33-34.

213. *Id.* at § II, art. 34.

214. *Id.* at § II, art. 35.

215. *Id.*

216. *Id.* at § II, art. 36.

217. *Id.* at § II, art. 38.

218. *Id.* at § II, art. 38, para. 2.

219. *Id.* at § II, art. 40.

220. *Id.* at § II, art. 46.

221. *Id.* at § II, art. 47.

Management of the joint-stock company is conducted by the shareholders' general assembly.²²² Voting at a general assembly takes the form of one share, one vote.²²³ A shareholders' general assembly must be convened no less than once a year, but extraordinary assemblies may be convened by the executive body.²²⁴ An assembly may also be convened by the board of directors upon demand of the supervisory board or the auditing commission.²²⁵

The board of directors is the executive body of the joint-stock company which manages day-to-day business.²²⁶ "Supervision of the financial and commercial operations of the board of directors of the joint-stock company shall be conducted by an auditing commission . . . elected from among shareholders and representatives of the employees."²²⁷ A joint-stock company may enlarge its capital by issuing new shares, exchanging bonds for shares, or increasing the nominal value of shares.²²⁸ A joint-stock company, whose shares are distributed by open subscription, is obligated to publish accounts of its activities in a format designated by the USSR Ministry of Finance, and is liable for the accuracy of the information it publishes.²²⁹

2. Limited-Liability Companies

A limited-liability company is defined as a company whose statutory capital is divided into shares, whose size is determined by its constituent documents, and whose liability is limited to the assets of the company.²³⁰ A precondition to the establishment of a limited-liability company is the possession of statutory capital in an amount no less than 50,000 roubles.²³¹

Upon receipt of full payment of the participant's contribution to the capital of the company, the participant receives a certificate issued by the company which, in contrast to the joint-stock company share certificate, is not considered a security.²³² Once the participant pays in full, he may, with some restrictions, transfer his share to a third party.²³³ Moreover, a participant may make additional contri-

222. Joint-Stock and Limited-Liabilities Regulations, *supra* note 10, at § II, art. 49.

223. *Id.* at § II, art. 52.

224. *Id.* at § II, art. 53.

225. *Id.* at § II, art. 54.

226. *Id.* at § II, art. 55.

227. *Id.* at § II, art. 57.

228. *Id.* at § II, art. 58, para 2.

229. *Id.* at § II, art. 63.

230. *Id.* at § III, art. 64.

231. *Id.* at § III, art. 66.

232. *Id.* at § III, art. 66, para. 4.

233. *Id.* at § III, art. 67. "Existing participants shall be entitled to a priority right to acquire the share (or part thereof) of a conceding participant." *Id.* Participants may transfer shares to third parties only if they have paid their contribution in full. *Id.*

butions to the capital of the company.²³⁴

The highest governing body of a limited-liability company is called the "participants' assembly."²³⁵ Participants' voting power depends on the number of capital shares they own in the statutory capital.²³⁶ A participants' assembly must be convened at least two times a year, unless otherwise stipulated by the constituent documents, and extraordinary assemblies may be convened by the chairman or upon demand of the executive body or the auditing commission.²³⁷

The executive body (the directorate of the company) may consist of one person (a director) who manages the day-to-day business of the company.²³⁸ The general director has the authority to act on behalf of the company, without power of attorney, provided he does not simultaneously act in the capacity of chairman of the participants' assembly.²³⁹ To check this power, the law provides that "[a] participant in a limited-liability company shall be entitled to petition the state arbitration service or a court of law to overturn a decision passed by a participants' assembly, which the participant believes to be in breach of the law or of the constituent documents."²⁴⁰

3. Comparison of Joint-Stock Companies and Limited-Liability Companies

Membership requirements of both joint-stock companies and companies with limited liability are similar. Both must have no less than two participants which may be enterprises, establishments, organizations, state authorities, or individual citizens.²⁴¹ Soviet and foreign citizens may be participants of joint-stock companies and companies with limited liability, unless otherwise stipulated by legislation of the USSR and of the union and autonomous republics.²⁴² However, only a Soviet legal entity may be a founder of a joint-stock company.²⁴³ This is the only restriction currently imposed by the USSR on foreign citizens and legal entities with respect to participation in joint-

234. *Id.* at § III, art. 71.

235. *Id.* at § III, art. 74.

236. *Id.* at § III, art. 74, para. 4.

237. *Id.* at § III, art. 77.

238. *Id.* at § III, art. 78.

239. *Id.* at § III, art. 78, paras. 4, 5.

240. *Id.* at § III, art. 80.

241. *Id.* at § I, art. 3.

242. *Id.*

243. *Id.* at § I, art. 38, para. 2.

stock companies.²⁴⁴ Republican legislation on joint-stock companies is currently being developed.²⁴⁵ However, the Joint-Stock and Limited-Liability Companies Regulations do differentiate between the rights of citizens and legal entities. Citizens may hold only registered shares, whereas legal entities may hold bearer shares.²⁴⁶

The main difference between a joint-stock company and a limited-liability company is the following: Shares of stock issued by a joint-stock company are referred to as securities,²⁴⁷ while participants' contributions to a limited-liability company are not.²⁴⁸ Shares of a joint-stock company may be publicly traded,²⁴⁹ and unless otherwise stipulated by the charter, the sale, transfer and disposal of share certificates do not require the consent of the company.²⁵⁰ In contrast, a share in a limited-liability company may be transferred to other participants of the company or to third parties, if not otherwise prohibited by the constituent documents, only with the consent of the other participants.²⁵¹ The capital fund of a joint-stock company cannot be less than 500,000 roubles;²⁵² whereas, the minimum amount for the capital fund of a company with limited liability is only 50,000 roubles.²⁵³

IX. THE MECHANISMS OF TRANSITION FROM STATE TO PRIVATE ENTERPRISE

A. *Stock Sale and the Transition of a State Enterprise Into a Joint-Stock Company*

Transformation of a state enterprise into a private enterprise oc-

244. These Joint-Stock and Limited-Liability Companies Regulations were adopted by a Soviet executive body. Therefore, strictly speaking, these regulations are not laws, but enactments. Law on joint-stock companies is currently being drafted.

245. "On the Adoption of Regulations on Joint-Stock Companies in the RSFSR," *Vedomosti RSFSR*, item 601 (1990) [hereinafter *RSFSR Joint-Stock Regs.*]. Article 1 of the *RSFSR Joint-Stock Regulations* states: "A joint-stock company is an organization created on the basis of a voluntary agreement between legal entities and citizens (including foreign ones) to pool their assets by issuing shares of stock, set up with the intention of satisfying public needs and making profits." *Id.* This provision is confirmed by the provision of Article 11, stipulating the citizens' right to become founders of a joint-stock company. *RSFSR Regulations on Joint-Stock Companies* are not law because they were adopted by the resolution of an executive body. These Regulations state that they are of a temporary character and will be replaced by statute (article 1).

246. *Joint-Stock and Limited-Liability Companies Regulations*, *supra* note 10, at § II, art. 34.

247. *Id.* at § II, art. 31, para. 1.

248. *Id.* at § III, art. 66, para. 4.

249. *Id.* at § II, arts. 40, 41.

250. *Id.* at § II, art. 34, para. 7.

251. *Id.* at § III, art. 67, para. 1.

252. *Id.* at § II, art. 30, para. 2.

253. *Id.* at § III, art. 66, para. 1.

curs in three ways: (1) the sale of all the stock of the state enterprise and formation of a joint-stock company; (2) the purchase of the state enterprise by a labor collective; or, (3) the lease of the enterprise with the option to buy. The stock sale must be a joint decision of the labor collective and the appropriate state agency.

In order to effectuate the sale of all the state enterprise's stock and the formation of a joint-stock company, stock is first issued representing the full value of the assets of the enterprise.²⁵⁴ This value is determined by a commission consisting of representatives of the state agency, the financial state agency, and the labor collective of the enterprise.²⁵⁵ The stock is issued and sold either by open subscription or direct sale to individuals and organizations.²⁵⁶ In accordance with the USSR Investment Law,²⁵⁷ Soviet and foreign citizens as well as legal entities, may become investors and buy shares of the stock of newly created and modernized enterprises.²⁵⁸ Thus, a state enterprise may sell its shares to a foreign investor. Once the sale is made, the state enterprise must pay off its debts from the proceeds of the stock sale and pay the remainder to the state budget.²⁵⁹ The entity which results from such a stock sale is a privately owned and publicly traded joint-stock company.

An example of such a stock transfer is the recent proposal made by the Ministry of the Machine-Tool and Tool-Making Industry of the USSR ("the Ministry") to each of its enterprises, amalgamations and organizations to transform these state entities into joint-stock companies.²⁶⁰ The property of the state entities will be divided into shares, fifty percent of which will be sold to private investors. The remaining fifty percent of the shares will be held by a new state agency called "The State Joint-Stock Amalgamation of Machine-Tool and Tool-Making Industry" ("the Amalgamation") created as of January 1, 1991. The Amalgamation will be an assignee of the Ministry with respect to the enterprises transferred into joint-stock companies. The result will be several joint-stock companies, each owned in part by private investors who bought shares of stock and in part by the

254. *Id.* at § II, art. 46, para. 1; Property Law, *supra* note 8, § III, art. 15, para 3.

255. Joint-Stock and Limited-Liability Companies Regulations, *supra* note 10, at § II, art. 46, para. 1.

256. *Id.* at § II, art. 46, para. 2.

257. Investment Law, *supra* note 12.

258. *Id.* at § I, art. 4, para. 1.

259. Joint-Stock and Limited-Liability Companies Regulations, *supra* note 10, at § II, art. 46, para. 3.

260. See *Law and Economics in the USSR*, 1-2 IUSTITSINFORM 47 (Moscow, 1991).

state agency — the Amalgamation. For the period of 1991, all these new joint-stock companies will receive state orders, limits imposed by the state, and centralized budget financing for planned activities, as well as a state supply of material, technical resources, and existing state benefits. The amount of stock held by the State Joint-Stock Amalgamation may be decreased in the future by the way of sale of this stock to private investors. Unfortunately, there is no indication as to the limit of shares of stock to be held by this state agency in the future, if such limit exists.

An existing joint-stock company may sell part of the stock of the company to either Soviet or foreign entities.²⁶¹ Soviet law does not prohibit foreign legal entities or foreign citizens from buying stock in a Soviet enterprise, unless such sale is expressly prohibited by the charter.²⁶² However, only Soviet citizens and Soviet legal entities may be the founders of the joint-stock company.²⁶³ Foreign investors should understand the Soviet currency rules with respect to investments and consult the Soviet Investment Law, the Foreign Investment Law,²⁶⁴ and the documents of registration (incorporation) of the enterprise before undertaking such a stock purchase.

The state's willingness to sacrifice its dividends to aid the transformation of a state enterprise into a joint-stock company is a clear indication of its commitment to economic reform and privatization. In accordance with the Resolution of the Council of Ministers of the USSR number 590, dated June 19, 1990,²⁶⁵ a state enterprise transformed into a joint-stock company by the decision of the appropriate authorities may sell some of its shares to private investors, and the appropriately authorized state agency holds the remainder of the shares.²⁶⁶ Stock dividends belonging to the state are not distributed to the state agencies, but remain temporarily at the disposal of the newly formed joint-stock company.²⁶⁷ These dividends should be used by the company to build up its assets.²⁶⁸ Therefore, the state is

261. Joint-Stock and Limited-Liability Companies Regulations, *supra* note 10, at § II, art. 41.

262. Property Law, *supra* note 8, at § III, art. 15, para. 2; Joint-Stock and Limited-Liability Companies Regulations, *supra* note 10, at § II, art. 38.

263. Joint-Stock and Limited-Liability Companies Regulations, *supra* note 10, at § II, art. 38. No similar restrictions are provided in the RSFSR Regulations on Joint-Stock Companies. On the contrary, it is expressly provided in article 11 thereof that foreign legal entities and citizens may also become founders.

264. Investment Law, *supra* note 12.

265. Joint-Stock and Limited-Liability Companies Resolution, Biull. Norm. Akt. SSSR, No. 590 art. 4, para. 2 (1990). The Resolution should not be confused with the Joint-Stock and Limited-Liability Companies Regulations or Securities Regulations, which were both enacted on June 19, 1990 and endorsed by Resolution No. 590.

266. *Id.* at art. 4.

267. *Id.*

268. *Id.*

willing to forego profits on its shares of stock in order to enhance the development of private enterprise.

B. Collective Buy-out and Lease

The second way to transform a state enterprise into a private enterprise is to effectuate a collective buy-out. This process is more complex than a sale of stock resulting in the creation of a joint-stock company. A group of employees called a labor collective²⁶⁹ may buy all or some of the state enterprise's property and thereby change the property into a collective property.²⁷⁰ This legal right is closely connected to the right to create a leased enterprise.²⁷¹

The establishment of a labor collective of a state enterprise is not new for Soviet jurisprudence. In 1987, the Law on State-Owned Enterprises first provided for the legal status of the labor collective.²⁷² The Enterprises Law later gave the labor collective broad authority over the administration of the enterprise, irrespective of the kind of property the enterprise owns.²⁷³ The Enterprises Law also provided the labor collective with two governing bodies: the General Conference and the Enterprise Council.²⁷⁴ The highest governing body of the labor collective is the conference of the labor collective.²⁷⁵ Representatives of the labor collective are on the council of the enterprise.²⁷⁶ Rights of the members of the labor collective are protected

269. "The labor collective of the enterprise is comprised of all citizens participating through their labor in its activity on the basis of a labor contract (agreement, understanding) and also other forms regulating labor relations between the worker and the enterprise." Enterprises Law, *supra* note 9, at § IV, art. 15, para. 1.

270. Property Law, *supra* note 8, at § III, art. 12, para. 1(1).

271. For a discussion of the Soviet "Leasing Law and Leased Enterprises," see *infra* notes 287-324 and accompanying text.

272. See Law on State-owned Enterprises, art. 2, para. 3 (1987), reprinted in IZVESTIYA, July 1, 1987. "The labor collective, as the full fledged master of the enterprise independently resolves all questions of production and social development." *Id.*

273. "The administration of the enterprise is carried out in keeping with its charter on the basis of a combination of principles of self-management of the labor collective and the rights of the owner to economic use of property." Enterprises Law, *supra* note 9, at § IV, art. 14, para. 1.

274. *Id.* at § IV, arts. 15, 16, 18.

275. Enterprises Law, *supra* note 9, at § IV, art. 16, para. 1.

The . . . Conference of the Labor Collective: resolves questions, related to the purchase of property by the enterprise; resolves the question of the need to conclude with the enterprise . . . a collective contract (agreement); elects representatives to the enterprise council and hears reports on their activity; if necessary may form a council of the labor collective and determine its functions.

Id.

276. "The council of the enterprise consists of an equal number of representatives

by law.²⁷⁷

The net profit of the state-owned enterprise²⁷⁸ belongs to the labor collective.²⁷⁹ "Part of this net profit becomes the property of the members of the labor collective."²⁸⁰ Each member of the labor collective has an account constituting his share of the profit. Stock may be issued to a member of a labor collective who receives interest or dividends on this stock.²⁸¹ The other part of the net profit is jointly owned by the labor collective.²⁸² The labor collective may use its jointly owned net profit (revenue) to buy out all or some of the property of the enterprise from the state.²⁸³ This buy-out process could take years. Meanwhile, the state continues to control the activity of the enterprise.

During the transition from a state enterprise to a private enterprise by a labor collective buy-out, the state continues to own the property of the enterprise, or at least the part of the property that has not yet been bought out by the labor collective. This lag constitutes residual state control over property. No matter how small current state control over property may be in comparison with the absolute control exercised by the state some years ago, state control over enterprise property is still too pervasive for an enterprise to exercise its own judgment about its goals and about the efficiency of its activity.²⁸⁴ To avoid a delay in the establishment of independence and self-management, which characterize of privatization, the Leasing Law,²⁸⁵ the Property Law, and Enterprises Law have created and advanced a new type of enterprise — the leased enterprise. A leased enterprise may be created as a long range form of enterprise or as a temporary, intermediate enterprise set up during the transition from state to private ownership.²⁸⁶

appointed by the owner of the property of the enterprise and representatives elected by [the] labor collective unless otherwise stipulated by the charter of the enterprise." *Id.* at § IV, art. 18, para. 1.

277. *Id.* at § IV, art. 18, para. 3.

Members of the enterprise council elected from the labor collective may not be fired during their term of office (on the initiative of the administration) from the enterprise or have their position (salary) lowered or be transferred to lower-paid work without the agreement of the general meeting (conference) of the labor collective.

Id.

278. "Net profit" is defined as the profit remaining after all taxes are paid and after all the other required payments into budget are made." *Id.* at § IV, art. 21, para. 2.

279. Property Law, *supra* note 8, at § IV, art. 25, para. 1.

280. *Id.*

281. *Id.* at § IV, art. 25, para. 2.

282. *Id.*

283. *Id.* at § III, art. 10, para. 2.

284. *Id.* at § IV, art. 24, para. 2.

285. Leasing Law, *supra* note 6, at § I, cl. 16.

286. *Id.* at § I, cl. 12.

C. Soviet Leasing Law and Leased Enterprises

The Soviet Leasing Law defines a leasehold enterprise as the entity that receives temporary title²⁸⁷ to the use of land, other natural resources and enterprises on a contractual basis and in return for payment.²⁸⁸ A lease agreement allows the lessee to engage independently in economic activities.²⁸⁹ The lease agreement is between a lessor (e.g. Soviet agency, foreign legal entity or private individual)²⁹⁰ and lessee (Soviet legal entity and private individual, joint venture, international association, foreign state or foreign legal entity).²⁹¹ A labor collective desiring to privatize part of a state-owned enterprise may enter into a lease agreement as lessees and later exercise its option to purchase the leased property,²⁹² thus, transforming it into a privately owned collective enterprise, cooperative, joint-stock company or other form of collective ownership enterprise, such as a partnership or small enterprise.²⁹³

In order to create a leasehold enterprise, the labor collective of a state enterprise must first create an organization of lessees which is an independent, legal entity.²⁹⁴ The decision to establish a leasehold enterprise must be passed at the conference of the labor collective by not less than two-thirds of the members.²⁹⁵ The organization of lessees, together with the appropriate trade union committee, prepares a draft of the lease agreement and submits it to the state authority empowered by the owner to grant a lease on the state enterprise.²⁹⁶ Any dispute concerning the lease agreement, including the right to grant the lease, may be resolved by state arbitration.²⁹⁷ When the lease agreement is signed, the lessee organization receives the assets of the state enterprise and assumes the status of a leasehold enterprise.²⁹⁸

287. *Id.* at § I, cl. 9. "Title" here does not mean title to the fee or property, it refers to ownership by the lessee of all products and income derived by him from the use of the property held under a lease. *Id.* at § I, cl. 9, para. 1. The lessee retains ownership of separate improvements. *Id.* at § I, cl. 9, para. 2.

288. *Id.* at § I, cl. 1.

289. *Id.* at § I, cl. 11, paras. 1, 2.

290. *Id.* at § I, cl. 4.

291. *Id.* at § I, cl. 5.

292. *Id.* at § I, cl. 10.

293. *Id.* at § I, cl. 10, para 2(2).

294. Leasing Law, *supra* note 6, at § I, cl. 16, para. 1(1).

295. *Id.* at § I, cl. 16, para. 1(2).

296. *Id.* at § I, cl. 16, para. 1(3).

297. *Id.*

298. *Id.* at § I, cl. 16, para. 1(4).

A leasehold enterprise is a separate legal entity, and it operates in accordance with the principles set forth in its charter adopted by the conference of the labor collective.²⁹⁹ The leasehold enterprise assumes the property rights and obligations of the state enterprise.³⁰⁰ “[The] leasehold enterprise retains the right to centrally-allocated capital investments and subsidies in the amounts established for a state enterprise.”³⁰¹

A lease agreement establishes the interplay between the state as lessor and the enterprise as lessee.³⁰² This relationship is outlined in the agreement with respect to the utilization of energy supplies, raw materials, incomplete production and finished products, the distribution of the remaining material incentive funds, the use and financing of the leasehold enterprise’s housing stock and the destination of payments received from debtors.³⁰³

Despite the necessary interplay between lessor and lessee in a leasehold relationship, the establishment of a leasehold enterprise is designed to provide the lessee with independence from state control.³⁰⁴ In fact, the Leasing Law abounds in terminology purporting to grant independence, self-management, openness, and extensive democracy to the leasehold enterprise.³⁰⁵ A leasehold enterprise enjoys ownership rights over all the products that it manufactures, income that it receives, and any other assets that it acquires by its own means.³⁰⁶ A leasehold enterprise may even issue securities to members of its labor collective representing the value of each member’s contribution to the assets of the enterprise.³⁰⁷ In addition, the leasehold enterprise has the right to sell, barter, sublet, and supply part of the leased property, for temporary use free of charge or for a fee, provided that such disposition does not reduce the value of the enterprise and does not breach other provisions of the lease.³⁰⁸

The leasehold enterprise has the option to buy the lease. The leasehold’s financial resources are derived from profit earned through marketing products, credits, sale of securities, donations and other monies.³⁰⁹ Net profit is at the complete disposal of the leasehold enterprise which enjoys “full independence” in determining its use.³¹⁰

299. *Id.* at § I, cl. 16, para. 2.

300. *Id.* at § I, cl. 16, para. 4.

301. *Id.* at § I, cl. 16, para. 4(3).

302. *Id.* at § I, cl. 16, para. 4.

303. *Id.* at § I, cl. 16, para. 5.

304. *Id.* at § I, cl. 11.

305. *Id.* at § I, cl. 17.

306. *Id.* at § I, cl. 21, para. 1.

307. *Id.* at § I, cl. 21, para. 3.

308. *Id.* at § I, cl. 18, para. 1(1).

309. *Id.* at § I, cl. 19, para. 2.

310. *Id.* at § I, cl. 19, para. 2.

Before undertaking the purchase of the property, the leasehold enterprise must first use its profits to cover financial obligations and labor costs, pay taxes and meet leasehold payments, pay insurance premiums and cover the cost of natural and labor resources, and make interest payments on credits.³¹¹ After these expenses are paid, the profit remaining then belongs to the leasehold enterprise and may be used by the leasehold enterprise to purchase the property held under the lease.³¹²

Following the purchase of the property by the leasehold enterprise, the lessee may, with the consent of the workforce, become a collective enterprise, cooperative, joint-stock company or any other form of enterprise operating on the basis of collective ownership.³¹³ Collective ownership is considered a form of private enterprise. The property purchased by the leasehold enterprise may also be divided into several small enterprises held by a closely connected group of individuals or by a family.³¹⁴ The future laws regulating each of these forms of private enterprise were contemplated early in the Leasing Law and were enacted shortly thereafter to implement a gradual system of private enterprise. These laws have been the subject of this study. Thus, the Leasing Law is the beginning of a new era of transition characterized by the withdrawal of a dominant state authority and the birth of private enterprise.

The Leasing Law was passed by the Soviet legislative body on November 21, 1989, early in the era and spirit of Glasnost. It contained the seeds of subsequent laws and regulations implementing privatization passed during 1990 and 1991. One cannot help noticing that this early law is replete with words referring to socialist doctrine.³¹⁵ The laws implementing privatization, which were passed in 1990 and 1991, have a distinctively nonpolitical character to them due to the absence of words like "socialism" or "socialist." For example, the Leasing Law proposes economic independence of the lessee from the shackles of state control, but it still requires the leasehold enterprise to "fulfill state orders for the sale of products (services, works), following the existing system of economic links and in volumes not exceeding those established for such orders for the year in which the property

311. *Id.* at § I, cl. 19, para. 2.

312. *Id.* at § I, cl. 10, para. 1.

313. *Id.* at § I, cl. 10, para. 2(2).

314. Small Enterprises Resolution, *supra* note 11, at art. 4, para. 5.

315. Leasing Law, *supra* note 6, at § I, cl. 15, para. 6, cl. 17, para. 1, & cl. 18, para. 1.

was leased.”³¹⁶ Moreover, the leasehold enterprise must voluntarily accept state orders and other obligations to produce and sell products.³¹⁷

Socialist doctrine is carefully weaved into this law to protect against the isolation of economic and managerial independence. A leasehold enterprise may still receive state subsidies to extend production and to fulfill tasks of a “social” nature from centralized state capital investments.³¹⁸ The leasehold enterprise may acquire raw materials and technical resources at the existing wholesale, retail and contract prices on terms established for state enterprises.³¹⁹ The leased enterprise has wider authority than a state enterprise with regard to employment, dismissal procedures, salary of workers, the daily work routine and work-shift system, as well as the method of accounting for work days, days off and holidays.³²⁰ Workers in a leased enterprise are entitled to the same number of holidays as workers of state enterprises.³²¹ Moreover, the state agrees to do everything within its power pursuant to existing legislation to defend the social rights of workers at leasehold enterprises.³²² The persons working under an individual or group leasehold are eligible for social insurance and social welfare on a par with factory and office workers provided that the lessees pay a fee to the state social insurance fund.³²³ The Leasing Law tries to save a decaying system of socialism amidst revitalizing talks of democratizing the Soviet Union are. The key words of that law which crystallize that intent are: “A leasehold enterprise shall act in the capacity of a socialist producer.”³²⁴

*D. Leasehold Enterprise and Foreign Economic Activity:
Resolution 1405*

According to the Leasing Law all foreign economic activity conducted by the leasehold enterprise is subject to procedures established for state enterprises.³²⁵ Before December 1988, all import-export activity between Soviets and foreigners was conducted through Soviet Foreign Trade Organizations (“FTOs”). Americans could not deal with Soviet business people individually; they had to deal with state agencies and experience bureaucratic delays. In accordance with the Resolution of the Council of Ministers of the

316. *Id.* at § I, cl. 18, para. 4.

317. *Id.* at § I, cl. 18, para. 4(2).

318. *Id.* at § I, cl. 18, para. 6.

319. *Id.* at § I, cl. 18, para. 5.

320. *Id.* at § I, cl. 20, para. 2(2).

321. *Id.*

322. *Id.* at § I, cl. 20, para. 3.

323. *Id.* at § I, cl. 26, para. 2.

324. *Id.* at § I, cl. 18, para. 1.

325. Leasing Law, *supra* note 6, at § I, cl. 18, para. 3.

USSR number 1405 ("Resolution 1405"),³²⁶ passed on December 2, 1988, all enterprises and productive cooperatives as of April 1, 1989, may avoid FTOs and exercise import-export activity directly.³²⁷ Resolution 1405 gave Soviet enterprises and production cooperatives doing business directly with foreign counterparts the right to establish independent foreign trade departments within their enterprises.³²⁸

E. Mandatory Hard Currency Sale and Gorbachev Tax

Pursuant to provisions of the Leasing Law, the convertible currency fund of the leasehold enterprise is at the disposal of the enterprise.³²⁹ However, it should be noted that enterprises in the USSR are required by law to "share" their foreign currency profits with the state, unless the enterprise has some foreign participation.³³⁰ In addition, a five percent tax has been imposed on the sale of goods and services by presidential decree. This requirement is referred to as the infamous "Gorbachev tax."

The mandatory sale of hard currency is not a tax but a mandatory "exchange" of part of the foreign currency profits for their equivalent in roubles.³³¹ The procedure for the mandatory sale of convertible currency by enterprises is set forth by Vnesheconombank in its Regulations on "The Procedure for the Mandatory Sale of Hard Currency by Enterprises, Associations and Organizations for the Repayment of the USSR's Foreign Debt and for the Formation of the Hard Currency Funds for Republics and Local Soviets of Peoples' Deputies and the Union-Republic Hard Currency Fund."³³² All Soviet enterprises, except those enterprises owned partially by foreign

326. Resolution of the USSR Council of Ministers, *Biull. Norm. Akt. SSSR* No. 1405 (1988) [hereinafter Resolution 1405].

327. *Id.* at art. 2, para. 2.

328. *Id.* at art. 2, para. 3.

329. Leasing Law, *supra* note 6, at § I, clause 19.

330. See Regulations on "The Procedure for the Mandatory Sale of Hard Currency by Enterprises, Associations and Organizations for the Repayment of the USSR's Foreign Debt and for the Formation of Hard Currency Funds for Republics and Local Soviets of Peoples' Deputies and the Union-Republic Hard Currency Fund," THE MOST IMPORTANT DOCUMENTS OF THE MONTH, February 1991 (Fact, Moscow, 1991) [hereinafter Vnesheconombank Regulations on the Procedure of Mandatory Sale]. These regulations were adopted in accordance with the Decree of the President of the USSR "On Special Order of the Utilization of Foreign Currency Resources in 1991," dated November 2, 1990, and the Resolution of the USSR Council of Ministers "On the Formation of Hard Currency Funds in 1991." *Id.*

331. Vnesheconombank Regulations on the Procedure of the Mandatory Sale, *supra* note 330.

332. *Id.*

investors, must sell a major part of their foreign currency profits to Vnesheconombank.³³³ The sale is executed subject to the commercial rate of exchange established by Gosbank³³⁴ on the date of the transaction.³³⁵ A joint venture between a Soviet and a foreign investor having only minimal participation will avoid the mandatory sale of hard currency. However, in order to receive favorable tax rates and benefits the foreign participation in the venture must be greater than thirty percent.³³⁶

A leased enterprise can avoid the mandatory sale of hard currency by entering into a joint venture with a foreign partner or other form of foreign investment as long as its foreign economic activity "is conducted in accordance with procedures established for state enterprises."³³⁷ State enterprises establishing joint ventures with foreign enterprises are subject to Soviet joint venture laws.³³⁸ Presumably, if a leasehold enterprise decides to establish a joint venture with a foreign legal entity, the lessor's permission is required.

F. Securities Regulations and the Leasehold Enterprise

A leasehold enterprise may issue securities (stocks and bonds),³³⁹ which must be registered.³⁴⁰ Each worker employed by the leasehold enterprise owns his shares in the property of the leasehold enterprise.³⁴¹ The number of the shares which a worker may own depends upon the nature of his work and the form of his contribution.³⁴² Thus, the labor performed by the worker is regarded as a type of investment for which he is paid dividends in an amount decided upon by the conference of labor collective.³⁴³

G. Lessees and the Leasehold Enterprise

In accordance with clause 23 of the Leasing Law, an organization of

333. *Id.* at § I, art. 1, & § II, art. 1.

334. The State Bank of the USSR.

335. Vnesheconombank Regulations on the Procedure of the Mandatory Sale, *supra* note 330 at § I, art. 1.

336. For a discussion of Soviet Enterprise Tax Law, *see supra* notes 80-92 and accompanying text.

337. Leasing Law, *supra* note 6, at § I, cl. 18, para. 3.

338. *See* Tiefenbrun, *Joint Ventures in the USSR, Eastern Europe and the Peoples' Republic of China, as of December 1989*, N.Y.U. J. INT'L L. & P., 667-794 (Summer 1989).

339. Leasing Law, *supra* note 6, at § I, cl. 21, para. 3.; Securities Regulations, *supra* note 10 at art. 4, paras. A-B, art. 20.

340. Rules of Registration of Stocks and Bonds in Financial Organs, art. 2, *published in* LAW & ECON., Nos. 1-2 (Jan.-Feb. 1991) (endorsed Oct. 11, 1990, in accordance with the Securities Regulations).

341. Leasing Law, *supra* note 6, at § I, art. 21, para. 2.

342. *Id.* at § I, cl. 21, para. 3.

343. *Id.* at § I, cl. 29, paras. 1, 3.

lessees created by a labor collective is one of several permissible types of lessees. A leasehold brigade may be established within a state enterprise and function independently of the state enterprise.³⁴⁴ If a state agency that is authorized to lease out the state enterprise wishes to do so, it will announce competitive bidding for the lease of the state enterprise.³⁴⁵ Possible lessees include a labor collective of the enterprise, mixed associations including outsiders as well as workers inside the enterprise, and various groups of citizens united with a goal to lease the enterprise.³⁴⁶ Cooperatives are also eligible to lease the enterprise.³⁴⁷ Under similar conditions, however, the labor collective has priority.³⁴⁸

Although a leasehold enterprise can function indefinitely in its capacity as lessee,³⁴⁹ legislators intended this type of enterprise to be temporary during the period of transition from state to private ownership.

X. SOVIET PRIVATIZATION LAW

The law of the Union of Soviet Socialist Republics on the Fundamental Principles of statization and Privatization of Enterprises ("the Privatization Law") was adopted by the USSR Supreme Soviet on July 1, 1991.³⁵⁰ The Privatization Law defines destatization as "the transformation of state enterprises into collective enterprises, joint-stock companies, other enterprises not under state ownership, and leasehold enterprises."³⁵¹ The Privatization Law also defines privatization as the acquisition of title to state-owned enterprises and shares in state owned joint-stock companies and other types of companies by individuals and legal entities.³⁵²

The jurisdiction of the Soviet Privatization Law is limited solely to union-owned enterprises and to enterprises jointly owned by the central and republican authorities.³⁵³ Privatization of enterprises owned

344. *Id.* at § I, cl. 23, para. 1.

345. *Id.* at § I, cl. 23, para. 2.

346. *Id.* at § I, cl. 23, para. 3.

347. *Id.* at § I, cl. 22.

348. *Id.* at § I, cl. 25.

349. Property Law, *supra* note 8, at § III, art. 10, para 2; Leasing Law, *supra* note 8, at § I, cl. 10, para. 2(2).

350. The Law of the Union of Soviet Socialist Republic on the Fundamental Principles of Statization and Privatization of Enterprises (1991), *reprinted in* IZVESTIYA AND SOV. ROSSIIA, August 8, 1991, at 1 [hereinafter the Privatization Law].

351. Privatization Law, *supra* note 350, at art. 1, para. 1.

352. *Id.* § I, at art. 1, para. 2.

353. *Id.*

by republican and municipal authorities alone shall be governed by the respective republican laws on privatization.³⁵⁴ This limited jurisdictional scope of the Soviet Privatization Law demonstrates an increased awareness of the growing strength of republican legislation and the importance of republican independence.

The Privatization Law outlines the main principles of privatization. The labor collective has the preferential right to choose the form and process of privatization from the options made available by the law.³⁵⁵ The labor collective has the right to provide guarantees of social protection of all the individuals of the enterprise.³⁵⁶ The collective may transfer property with or without compensation or a combination of both, and it must consider the equality of rights of individuals with respect to the acquisition of property. The law also discusses the state and public control of privatization and the obligation of the enterprise to comply with antitrust legislation.³⁵⁷

The list of enterprises that are not subject to privatization for reasons related to defense, security, environmental protection and state monopoly over certain activities, is designated by the Cabinet of Ministers of the USSR.³⁵⁸ The Privatization Law allows foreign legal entities, foreign citizens and stateless persons to participate in privatization,³⁵⁹ but the preemptive rights discussed above are given only to the citizens of the USSR. The republics, however, may restrict the acquisition of property by a particular foreign investor or by all foreign investors in general.³⁶⁰

Privatization is organized and controlled by the State Property Fund of the USSR,³⁶¹ which is authorized to prepare and implement programs of privatization grant preferences, exercise control over privatization and initiate legal proceedings for violation of the privatization law.³⁶² The initial request for privatization may come from the labor collective, enterprise councils, State Property Fund, and other legal entities and citizens. The ultimate decision on privatization is made by the State Property Fund. Any disagreement between the State Property Fund and the labor collective is within the jurisdiction of the Supreme Arbitration Court.³⁶³

Privatization of a particular enterprise is organized and implemented by a commission consisting of "representatives of the State

354. *Id.* at § I, art. 2, para. 4.

355. *Id.* at § I, art. 3, para. 1.

356. *Id.* at § I, art. 3, para. 2.

357. Privatization Law, *supra* note 350, at § I, art. 3.

358. *Id.* at art. 4.

359. Privatization Law, *supra* note 350, at § I, art. 5.

360. *Id.* at § I, art. 6, para. 4.

361. *Id.* at § I, art. 7.

362. *Id.* at § I, art. 7, 8.

363. *Id.* at § II, art. 9.

Property Fund, the management of an enterprise, the labor collective, trade union organizations," the enterprise's financial agency and banking institutions.³⁶⁴

Article 11 of the Privatization Law stipulates different forms of privatization:

- (1) transformation of a state-owned enterprise into a leasehold enterprise, a collective enterprise, a joint-stock company, another type of business company, a partnership or a cooperative; (2) acquisition by individuals, or by legal entities created thereby, of state-owned stock; (3) redemption of state property by a leasehold enterprise or another lessee; and (4) sale of the enterprise through competitive bidding or at an auction.³⁶⁵

These forms of privatization have already been discussed and mirror the forms set forth in the laws constituting the legal framework of privatization.

State enterprises are transformed into collective enterprises in accordance with an agreement entered into by and between the State Property Fund and the labor collective setting forth the terms of the redemption of the property by the members of the labor collective.³⁶⁶ When the state-owned enterprise is transformed into a joint-stock company, the State Property Fund incorporates the joint-stock company.³⁶⁷ Shares of stock are issued for the full value of the property of the state-owned enterprise, and this value is determined by a commission.³⁶⁸ Article 15 defines the sale of state-owned enterprises by competitive bidding and at auction. The initial offering price of the enterprise is its estimated value unless otherwise provided by Republican legislation.

During the privatization process, the new owner of the enterprise may enter into an agreement with the State Property Fund with respect to the refurbishment of the enterprise, the preservation of the principal of the business of an enterprise, its product lines, and minimum volume of output of these products the supply of a specific product to a particular customer, or the ecological safety measures of the enterprise. Violation of these contractual obligations may result in the termination of the agreement on privatization.³⁶⁹

When the enterprise is bought out in accordance with a deferred payment plan, the right of ownership is transferred to the new

364. *Id.* at § II, art. 10.

365. *Id.* at § II, art. 11.

366. Privatization Law, *supra* note 350, at § II, art. 13.

367. *Id.* at § II, art. 14, 17.

368. *Id.* at § II, art 17, paras. 1, 2.

369. *Id.* at § II, art. 16.

owner. The new owner must pay a deposit of not less than twenty percent of the purchase price.³⁷⁰ The rest of the payment due is secured by the property of the enterprise.³⁷¹ This debt must be paid off by the purchaser within ten years.³⁷²

Payment for the property of the enterprise to be privatized may come from the net profit distributed to members, amortization deductions, bank credit facilities, and foreign investor's capital.³⁷³ Property may be given to the new owner free of charge, including, without limitation, property which has depreciated more than seventy percent.³⁷⁴

XI. CONCLUSION

Free enterprise in the Soviet Union was seriously contemplated and written into law as early as May 26, 1988 with the enactment of the Law on Cooperatives which accorded members of a cooperative the use of, disposition of, and transfer rights to property owned by the membership. Free enterprise with respect to economic reform implies the development of private enterprise and the declining influence of state control. Glasnost and perestroika have created a climate which is conducive to the development of free enterprise, and many of the laws passed in the Soviet Union from the end of 1988 to 1991 reflect the spirit of the times, the increasing awareness of the dangers and benefits of big government, and the undeniable influence of American law on Soviet legislation.

The Leasing Law, which was drafted early in the era of Glasnost and perestroika, contains the seeds of many laws that followed it constituting the legal framework of Soviet free enterprise. But the language of the Leasing Law, which is punctuated with references to socialism and state aids, reveals the state of mind of the legislators reluctant to contemplate the necessity of abandoning the socialist system in order to adopt a market economy and permit private enterprise. The Leasing Law provides an interim structure during the transition from state to private ownership whereby the state continues to own the property as lessor, while the individual or legal entity possesses the property and owns only its fruits.

The Land Law, the Property Law, the Enterprises Law and the Joint-Stock Companies and Companies with Limited-Liability Regulations, as well as the Securities Regulations, were all contemplated in the Leasing Law and adopted soon thereafter in February, March

370. *Id.* at § III, art. 18, para. 5.

371. *Id.* at § II, art. 16, para. 3.

372. *Id.* at § III, art. 18, para. 5.

373. *Id.* at § III, art. 18, para. 3.

374. *Id.* at § IV, art. 20.

and June of 1990. These laws and regulations are written in a style that is clearly less political than the earlier laws. Each of these laws and regulations is one piece of a structured puzzle designed to implement gradually private enterprise in the USSR. The Soviet Privatization Law passed in July 1991 echoes the privatization systems set forth in the earlier laws, and the limited scope of its jurisdictional reach demonstrates an increased awareness of republican independence.

Despite the desire for the establishment of a free market economy reflected in recent Soviet legislation, effective state controls still persist in one form or another in the laws, but in decreasing numbers.

The lingering role of state authority is observed in the Land Law which provides not for the ownership of land, but merely for the use, possession and disposition of land, without allowing the actual transfer of land to a third party other than to an immediate member of the family.

The Property Law defines the very concept of "ownership" as the right to possess, to use and to dispose of property, and it provides for the establishment of certain privately owned cooperatives, partnerships, joint-stock companies and companies with limited liability, as well as enterprises owned by religious organizations. A collective enterprise may be created by the sale of part or all of the assets of an existing state enterprise to a labor collective. This form of acquisition paves the way for the transformation of a state enterprise into a private enterprise. A collective enterprise resembles a close corporation whose stock is held by the directors, officers and employees of the corporation. Stocks and securities of a collective enterprise are regulated by rules and regulations passed simultaneously with the Enterprises Law and the Joint-Stock Companies and Companies with Limited Liability Regulations.

The Enterprises Law which is analogous to our business corporation law, develops rights provided in the Leasing Law, the Land Law and the Property Law. The Enterprises Law establishes principles and procedures for the creation and registration of a private enterprise and clarifies the relation of the enterprise to the state. An enterprise is defined with respect to the kind of property it possesses. Thus, an enterprise may be classified as an individual or family enterprise, a collective enterprise, a partnership, or a state-owned enterprise, depending on who possesses the property of the enterprise. The state controls the registration of the enterprise, but any further

interference by the state with respect to the economic activity of a registered enterprise is forbidden.

Joint-Stock Companies Regulations and Companies with Limited-Liability Regulations define the joint-stock company as a company which issues shares to its members who receive a share certificate called a security. Only Soviet companies and individuals may be founders of a joint-stock company whose shares may be traded publicly. In contrast, a company with limited liability, whose start-up capital is less than a joint-stock company, issues a certificate which is not a security. This certificate is transferrable to a third party only with the consent of the other participants.

There are basically three mechanisms for the transformation of a state enterprise into a private enterprise: (1) stock sale by the state enterprise; (2) a buy-out of the state enterprise by the labor collective and transformation of the state-owned enterprise into a leasehold enterprise, a collective enterprise, a joint-stock company, or any other economic association; and (3) lease of the state enterprise with the option to buy (redemption of leased state property by a leasee). The privatization law provides a new, fourth mechanism: sale of the enterprise by competitive bidding.

The recent Foreign Investment Law gives foreign investors the right to own one hundred percent of an enterprise in the Soviet Union. Foreign investors may repatriate profits in dollars to the extent the dollars are earned by the enterprise in the Soviet Union. A foreign investment may be structured in the form of a joint-stock company, a company with limited liability or any other form of enterprise legally permissible in the Soviet Union. This law is a giant step in the direction of free enterprise, but it contains hidden state controls, bureaucratic requirements, and problems associated with the nonconvertibility of the rouble, which must be eliminated in future legislation in order to facilitate foreign investment, maximize profits, and allow entrepreneurs to capitalize on the benefits of a free market system.