



FARM REORGANIZATION IN THE RUSSIAN FEDERATION

MANUAL

VOLUME ONE

Moscow 1995



**MANUAL
OF THE
FARM
REORGANIZATION
IN THE
RUSSIAN FEDERATION**

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***Manual of the Farm Reorganization
in the Russian Federation,
in Three Volumes:***

- Volume One** - Manual of the Farm Reorganization
in the Russian Federation
- Volume Two** - Appendices to the Manual of the Farm
Reorganization in the Russian Federation
- Volume Three** - Information Leaflets to the Manual of the
Farm Reorganization in the Russian Federation

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***INTRODUCTION TO THE
MANUAL OF FARM
REORGANIZATION***

Introduction

After decades when government owned and operated farms and other forms of collective ownership predominated in Russian agriculture, the Russian government has started the process of reorganizing the state agricultural sector into privately held farming enterprises.

Although the means for fundamental reorganization are now available, on most farms land and property passed from the state to the collective of the workers without any substantial changes being made to the farm's production structure.

In many cases, former state and/or collective farms face extreme financial stress and, in effect must go through a bankruptcy proceeding or reorganization in order to continue operations at all.

One of the main impediments on the way to large-scale farm reorganization is a lack of information on the aims and goals of reorganization, its potential and effectiveness within the framework of the Russian legislation.

The aim of this Manual is to present a detailed description of the procedure for fundamental farm reorganization and the creation of new enterprises of various legal types on the basis of the former state and collective farms.

This Manual was prepared on the basis of experience of farm reorganization undertaken in Vologda, Pskov, Kaluga and Saratov Oblasts. The Manual was also developed taking into account farm reorganization practices in Nizhny Novgorod Oblast, as reflected in a number of legislative acts and the Manual "Land privatization and Farm Reorganization in Russia", produced by the International Finance Corporation.

The Manual was developed in May 1995 in accordance with existing legislation. It is crafted in loose-leaf format so that as legislation or procedures are adopted, amendments can easily be incorporated into the body of the document, and outdated materials removed. In this manner, the Manual can easily be updated so that persons participating in the reorganization process have available current information, procedures, examples, etc.

This manual was written for a Russian audience consisting of oblast and rayon reorganization commissions, farm managers, members of intra-farm reorganization commissions, government officials, consultants working on reorganization and any other parties with a vested interest in reorganization.

The structure of the Manual has been designed to guide the reader step by step through the reorganization process. Chapters 1 - 4 of Volume I address general issues of farm reorganization. Beginning with chapter 5, each chapter corresponds to a particular stage of the reorganization process and is subdivided into sections dealing with basic principles, relevant legislation, and problems of implementation. Volume II contains relevant Appendices, including model documents. Volume III consists of information

leaflets on various issues of reorganization that can be used during the information campaign on the farms.

The language has been tailored to make legal and technical terminology accessible to a wide audience.

TABLE OF CONTENTS

Chapter One: Key Stages of Farm Reorganization	
1.1. Introduction	7
1.2. Farm Reorganization Methods	9
1.3. Legal Basis	16
1.4. Farm Reorganization Procedures	
1.4.1. Stage One: Information Campaign	17
1.4.2. Stage Two: Preparatory Stage	19
1.4.3. Stage Three: Formation of New Enterprises	20
1.4.4. Stage Four: Land and Property Distribution	22
1.4.5. Stage Five: Registration of New Enterprises and Individual Entrepreneurs	23
1.4.6. Stage Six: Finalizing Contracts	23
1.4.7. Stage Seven: Organizing the Economic Activities of Newly Established Enterprises	24
Chapter Two: The Legislative Basis for Farm Reorganization	
2.1. Relevant Legislation (1990-1995)	27
2.2. The New Civil Code of the Russian Federation (1994)	29
2.2.1. Commercial and Non-Commercial Organizations	29
2.2.2. The Reorganization of Legal Entities	29
2.2.3. Liquidation of a Legal Entity	30
Chapter Three: The Information Campaign	
3.1. Principles of an Information Campaign	43
3.1.1. Purpose of Information Campaign	43
3.1.2. Important Aspects of the Information Campaign	43
3.1.3. Enlisting Outside Assistance	44
3.2. Responsibilities of the Commission for the Information Campaign	45
3.2.1. Establishment of Information Centers	45
3.2.2. Securing Rights Via Proper Documentation	45
3.2.3. Informing Share Owners of Developments in the Reorganization of the Farm	45
3.2.4. Consultation Duties of the Commission	46
3.3. Practical Recommendations for Organizing an Information Campaign	
3.3.1. Information Work before the General Meeting	47
3.3.2. Information Campaign at the Farm Level	47
3.3.2.a. Appointing a Person to Direct the Information Campaign	47
3.3.2.b. Methods for Disseminating Information	47
3.3.2.c. Model Schedule of the Information Campaign	52
3.3.2.d. Duties of the Information Campaign Coordinator	52
3.3.3. Information Campaign at the Raion and Oblast Levels	52

Chapter Four: Preparatory Stage of Farm Reorganization

4.1. Overview	59
4.1.1. Introduction	59
4.1.2. Initial Steps in Farm Reorganization	59
4.1.3. Activities of the Commission During the Preparatory Stage	60
4.1.3.a. Developing the Reorganization Plan	60
4.1.3.b. Addressing Social Issues	60
4.1.3.c. Conducting an Inventory of Land and Property of the Farm	62
4.1.3.d. Preparation for Issuance of Land and Property Share Titles	62
4.2. Implementation of the Preparatory Stage	64
4.2.1. Organization and Conduct of the General Meeting	64
4.2.1.a. The General Meeting for Joint Stock Companies	64
4.2.1.b. General Meeting for Other Organizational Forms	64
4.2.1.c. Preliminary Work on the Social Sphere	65
4.2.1.d. Agenda of the General Meeting	65
4.2.1.e. Making a Decision on Reorganization	66
4.2.2. The Farm Reorganization Commission	66
4.2.2.a. Composition of the Reorganization Commission	66
4.2.2.b. Basic Duties of the Commission	66
4.2.3. Addressing Social Problems of Reorganizing Enterprises	67
4.2.3.a. Transfer of the Social Sphere	67
4.2.3.b. Preparation for the Transfer of the Social Sphere	68
4.2.3.c. Documentation Associated with the Transfer of the Social Sphere	69
4.2.3.d. Local Administration Involvement	70
4.2.3.e. Housing Transfer	71
4.2.3.f. Protection of Socially Vulnerable Groups	71
4.2.4. List of Persons Entitled to Land and Property Shares	71
4.2.4.a. Guidelines on the Formation of Entitlement Lists for Land and Property Shares	72
4.2.4.b. Procedure for List Preparation	74
4.2.5. Farm Land and Property Inventories	75
4.2.5.a. Land Inventory and Land Share Calculation	75
4.2.5.b. Property Inventory	76
4.2.5.c. Property Inventory Procedures	77
4.2.6. Recalculating of Property Share Fund and Value of Property Shares	79
4.2.6.a. Compensating for Inflation	80
4.2.6.b. Property Share Fund and Calculation	80
4.2.6.c. Property Share Calculation	81
4.2.7. Documents on Land and Property Shares	83
4.2.7.a. Documents Needed for Issuance of Certificates	83

4.2.7.b. Issuance of Property Share Certificates	84
4.2.7.c. Issuance of Land Share Certificates	84
4.3. Rights and Opportunities of Land and Property Share Owners	85
4.3.1. Methods for Land Share Disposal	85
4.3.2. Methods for Property Share Disposal	87

Chapter Five: Formation of New Agricultural Enterprises

5.1. Basic Principles of Forming New Agricultural Enterprises	91
5.2. Legal Basis for Forming New Agricultural Enterprises	94
5.3. Procedures for Establishing New Agricultural Enterprises	96
5.3.1. Main Steps for the Formation of Agricultural Enterprises	96
5.3.1.a. Formation of a Promotion Group	96
5.3.1.b. Feasibility Study	96
5.3.1.c. The Choice of Legal Form	96
5.3.1.d. An Organizational Meeting	99
5.3.1.e. Founding Documents	99
5.3.1.f. Discussions of Terms for Participation in the New Enterprise	100
5.3.1.g. Creation of Associations (Unions)	100
5.3.2. Legal Forms of New Agricultural Enterprises	100
5.3.3. Preparation of Founding Documents for New Agricultural Enterprises	127
5.3.3.a. Founders' Agreement	127
5.3.3.b. The Enterprise Charter	127

Chapter Six: Distribution of Land and Property

6.1. Basic Principles of Land and Property Distribution	133
6.1.1. Organizing the Distribution of Land and Property	134
6.2. Implementation of Land and Property Distribution	136
6.2.1. Methods for Land and Property Distribution	136
6.2.1.a. Selecting an Appropriate Distribution Model	136
6.2.1.b. Distribution by Agreement	136
6.2.1.c. Distribution by Auction	137
6.2.1.d. Distribution by Lottery	138
6.2.1.e. Distribution by Tender	138
6.2.1.f. Combination of Different Methods	138
6.2.2. Main Stages of Land and Property Distribution	139
6.2.2.a. Preparatory Stage	139
6.2.2.b. Main Stage	142
6.2.2.c. Final Stage	142
6.2.3. Preparatory Stage of Land and Property Distribution	143
6.2.3.a. Formation of Land and Property Lots	143
6.2.3.b. Preparation and Announcement of Lists of Land Plots and Property Units	146
6.2.3.c. Submission of Bids and Applications	147
6.2.3.d. Unclaimed Land and Property Shares	149
6.2.3.e. Necessary Documents	150

6.2.4. Organization and Holding of Intra-Farm Auctions	150
6.2.4.a. Organization of Intra-Farm Auctions	151
6.2.4.b. Main Rules of Intra-Farm Auctions	152
6.2.4.c. Documents for Intra-Farm Auctions	156
6.2.5. Exchange of Land Plots and Property Units	159
6.2.6. Transfer of Land Plots as the Result of Distribution	159
6.2.6.a. Documents Certifying the Right of Ownership to Land Plots	160
6.2.6.b. Transfer of Land Plots to Enterprises and Individual Owners	161
6.2.6.c. Compilation of Maps	164
6.2.7. Transfer of Non-Agricultural Lands	164
6.2.8. Actual Transfer of Property	164
6.2.9. Preparation of the Divisional Balance Sheets	166
Chapter Seven: Registration of New Enterprises	
7.1. Main Principles	171
7.2. Registration Procedures	173
7.2.1. Registration of New Agricultural Enterprises	173
7.2.2. Registration of Individual Entrepreneurs	174
7.2.3. Denial of Registration	175
Chapter Eight: Contracts Between Share Holders and New Enterprises	
8.1. Introduction	181
8.2. Types of Contracts	186
8.2.1. Lease Agreements	186
8.2.2. Other Agreements	188
8.2.2.a. Purchase-Sale Agreement	188
8.2.2.b. Exchange Agreement	189
8.2.2.c. Deed of Gift	189
8.2.2.d. Inheritance	189
8.2.2.e. Tax Liabilities	190
Chapter Nine: Organizing Activities of New Enterprises	
9.1. Procedures for Terminating Workers on the Reorganizing Enterprise	195
9.2. Hiring Workers for New Enterprises	197
9.3. Labor Contracts	198
9.4. Protection of Workers' Rights and Interests	200
9.5. Preparation of Business Plans for Newly Organized Farms	201
9.5.1. Stages of Business Plan Development	201
9.5.2. Basic Information on Business Plans	202
9.5.3. Content and Structure of a Business Plan	203
9.5.4. Recommendations for Developing a Business Plan	203
Glossary	209

CHAPTER ONE

KEY STAGES OF FARM REORGANIZATION

Contents:

- 1.1. Introduction
 - 1.2. Farm Reorganization Methods
 - 1.3. Legal Basis
 - 1.4. Farm Reorganization Procedures
-

1.1. Introduction

The introduction of new forms of property ownership, together with the establishment of new economic relations in rural areas, has drastically changed the face of Russian agriculture. The purpose of the current agrarian sector reforms is to set up structures capable of functioning in a market economy and to provide conditions for effective and viable agricultural production.

The main methods for reforming production organizations are land privatization and farm reorganization.

Substantial advances in setting up new production organizations were first made during the 1992-1993 reorganization campaign. At that time the majority of state and collective farms were transformed into joint stock companies, cooperatives, and other types of enterprises. The land and property of these farms became the common property of farm members entitled to land and property shares, some of whom left the collective and used their land and property shares to form peasant farms.

By January 1994 two thirds of all farms had re-registered as new legal entities -- 11,000 had formed partnerships of different types, 1,900 became cooperatives, and the remainder formed open joint stock companies and other types of entities. To date, about 285,000 peasant farms have been created.

On many farms, however, reorganization was carried out in a superficial manner by re-registering the farms without changing their production structure or intra-farm relations. In some cases, individual owners were not able to take advantage of their rights. Some land and property share owners were not issued the appropriate documents allowing them to exercise their rights; other land and property share owners were simply not aware of their rights.

Recently adopted laws and decrees have created the foundation for a more fundamental reorganization of agricultural enterprises.

Farm reorganization is carried out on a strictly voluntary basis and offers to every farm worker freedom of choice in exercising his/her rights of ownership in land and property.

All the parties to farm reorganization should know that their rights of ownership are guaranteed and protected by the state. Local administrations exercise state control over farm reorganization.

Farm reorganization is carried out with the view towards creating structures which are viable and effective under market conditions. Creation of such structures is carried out as land and property share owners dispose of their shares. The structure of an agricultural enterprise after reorganization should comply with the legal and organizational forms envisaged by the Civil Code of the Russian Federation of 1994.

Current farm reorganization practice is based on the following principles:

- Farms make a decision to reorganize on a voluntary basis;
- Farms are free to choose the methods of reorganization; owners are free to choose how to dispose of their land and property shares and how to exercise their rights of ownership;
- Reorganization is carried out openly;
- All land and property share owners are informed of their rights and the methods of exercising such rights.

The impact of the first stage of farm reorganization is manifested as follows:

- The majority of the reorganizing farms have become either partnerships or joint stock companies, and are no longer kolkhozi (collective farms) or sovkhozi (state farms).
- Farms differ greatly as to the degree of reorganization achieved in the first stage.
- Land and property shares have been calculated on many farms during the first stage.

Reorganization should be carried out with consideration for these particularities.

1.2. Farm Reorganization Methods

Fundamental reorganization does not necessarily entail the full disintegration of the collective farms and the transformation of all owners into individual farmers. *During reorganization conditions should be provided and the foundation laid for the effective performance of new agricultural entities in various legal forms.*

According to the Civil Code of the Russian Federation of 1994 (Article 57) the reorganization of a legal entity may be effectuated in the form of:

- **merger** of two or more legal entities;
- **incorporation** of one legal entity into another legal entity;
- **division** of a legal entity into two or more enterprises after which the initial enterprise ceases to exist;
- **separation** under which the legal entity preserves its original structure even as some of its components split off and form one or more new organizations;
- **transformation** of a legal entity of one type into a legal entity of another legal and organizational form. In this case the initial legal entity has only one successor.

Reorganization may be effectuated using a combination of different methods. For instance, an agricultural enterprise may divide up into several independent organizations, which later may opt to merge as a means of rationalizing the joint use of production infrastructure and social sphere.

Some of the possible methods of farm reorganization are shown on the scheme below and include the following most widely used variants:

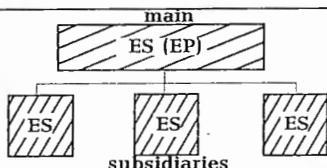
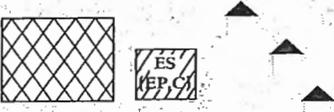
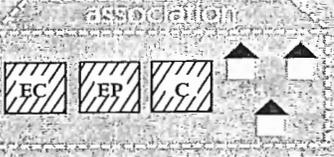
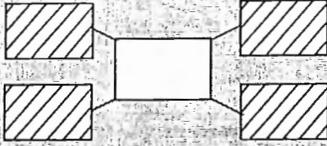
1. Transformation of a legal entity in another legal and organizational form

If, as a result of a change in form the original organization ceases to exist, then it has only one legal successor. Due to the introduction of new legal and organizational forms by the Civil Code of the RF of 1994, agricultural enterprises must bring their founding documents in line with this legislation. A farm may choose a legal and organizational form that suits it and then carry out reorganization accordingly. This is especially true for farms the legal and organizational forms of which are not envisaged in the new Civil Code, including collective farms.

2. Creation of subsidiaries

Subsidiaries are formed on the basis of a division of the initial organization for the purpose of creating a more flexible management system. Subsidiary enterprises depend on the head

Options for Farm Reorganization

		Before Reorganization	After Reorganization	Reorganization Method
Transformation	1			Transformation into an enterprise of different legal form
	2			Creation of subsidiaries
Separation	3			Separation of enterprises and/or IFs'
Different types of division	4			Break up into independent enterprises
	5			Division accompanied by formation of an association
	6			Division accompanied by formation of an indivisible fund
	7			Break up accompanied by joint activities
	8			Break up into IFs' (may form an association)
Merger or Accession	9			Merger of two or more enterprises
	10			Incorporation of one enterprise into another

RF – reorganizing farm; ES – economic societies;
 EP – economic partnerships; C – cooperatives;
 – individual farms (IFs').

society or partnership. By possessing a stake share in the authorized capital or by signing a special agreement or by using some other mechanism the head enterprise can influence decisions made by its subsidiaries.

Creation of a subsidiary is often preceded by the creation of an intra-farm self-accounting subdivision. Subsidiaries in their turn may later be reorganized into fully independent organizations.

3. Separation of agricultural enterprises or/and individual farms

In the event of a separation, one or several subdivisions separate from an agricultural enterprise and form enterprises of a different legal and organizational form. Some members of an agricultural enterprise may also secede with their land and property shares and create individual farms. In some cases new enterprises and peasant farms have close ties with their principle enterprise which in its turn offers them some services. The head enterprise continues to function in its original form.

4. Division into independent enterprises

In the event of a division, a farm is broken-up into several smaller independent enterprises of different legal and organizational forms. Division may be on a territorial basis and result in the creation of smaller enterprises which are easier to manage. Individual farms may also be formed as a result of reorganization. Division may be based on production and other principles in accordance with the decisions taken by the share holders. Individual farms can also be set up during farm reorganization.

5. Division accompanied by the formation of associations or other types of agricultural unions

A farm may be broken up into independent enterprises and individual farms that may later form an association or another type of an economic union, which will continue to provide services to the newly formed enterprises.

6. Division accompanied by formation of an indivisible fund

An indivisible fund may be formed prior to land and property distribution. After that, the farm may be broken into independent enterprises. In most cases the indivisible fund includes servicing enterprises or social facilities. The indivisible fund can be the foundation for the creation of an independent enterprise or enterprises. In this case each agricultural producer has a share in the capital of the new enterprise and secures the right to use its services.

7. Division accompanied by joint activities

In some cases a farm is broken up into independent enterprises with the reorganization of jointly used facilities into independent servicing organizations of different legal and organizational forms and individual farms. Some facilities can be transferred to individual entrepreneurs. By signing agreements on joint activities or by using a production cooperative the servicing enterprise may provide service to other enterprises formed on the basis of the reorganized farm.

8. Break-up into individual farms

A farm may break up into individual farms, some of which may later form an association or a consumer cooperative or any other form of inter-farm union.

9. Merger of enterprises

In the event of a merger, the rights and duties of each of the old entities pass to the newly formed enterprise.

10. Incorporation into another enterprise

In the event of the incorporation of one or several enterprises into another enterprise, a new legal entity is formed, and the rights and duties of each of the former enterprises pass to this entity.

The method of farm reorganization has to be chosen by farm members with the consideration for the specialization of the farm, its social and economic conditions and other particularities.

Each model of farm reorganization as provided for in the current Russian legislation have its own particularities, and at the same time all models have similarities.

The following tables show the main stages of farm reorganization in the event of a break-up or separation, or the transformation of the farm into an enterprise of a different legal and organizational type, or also in the event of a merger of enterprises or incorporation of one farm into another.

Division is the most complex form of reorganization and includes practically all stages contained in other reorganization models. This model is also one of the most promising as it provides for multiple choice of reorganization paths depending on the specific conditions of the farm.

Reorganization procedures will be further described using the example of a farm break-up model.

Chart of Farm Reorganization

in the form of division, separation or transformation into an enterprise of another legal and organizational form

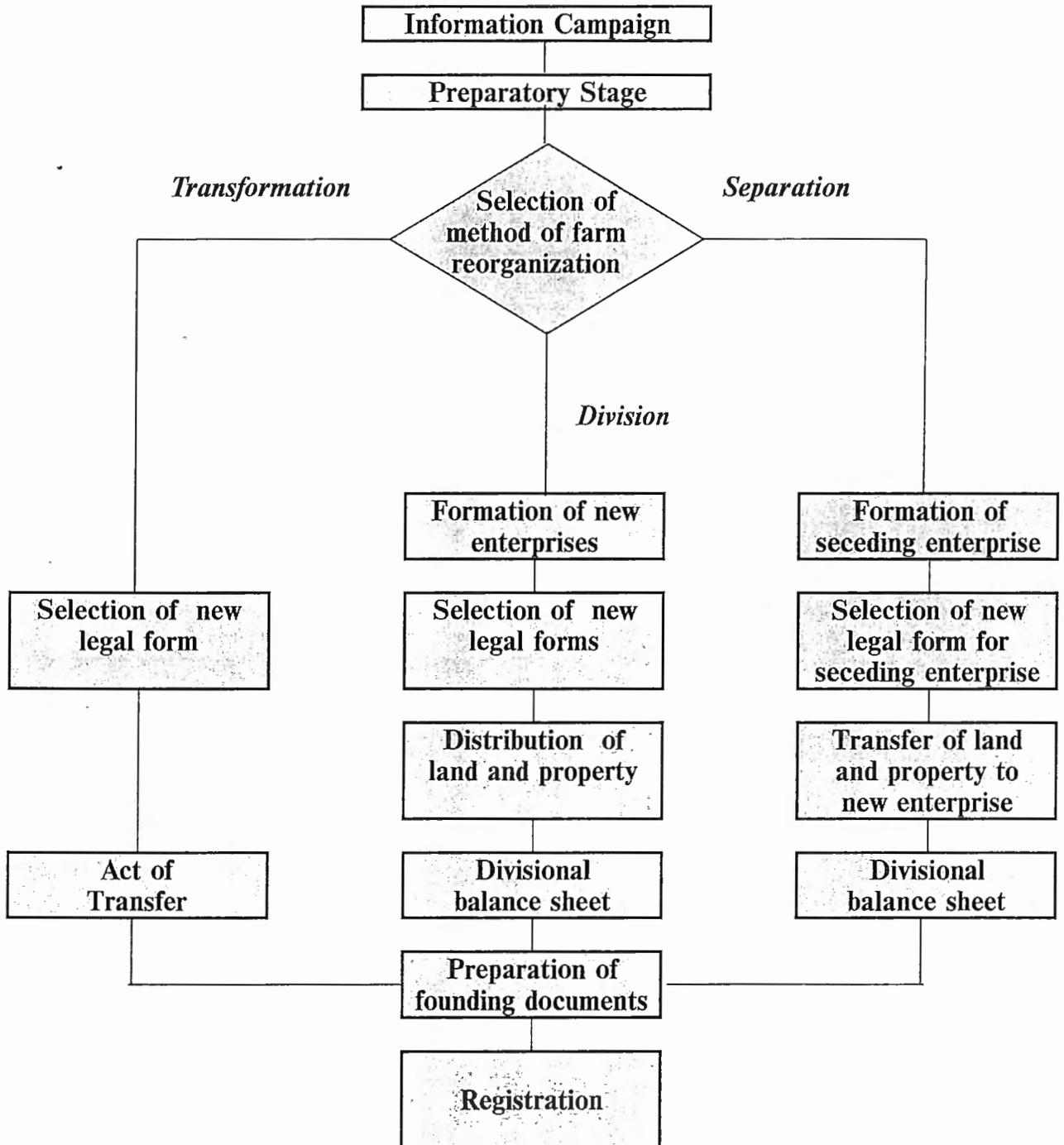


Chart of Farm Reorganization in the event of accession

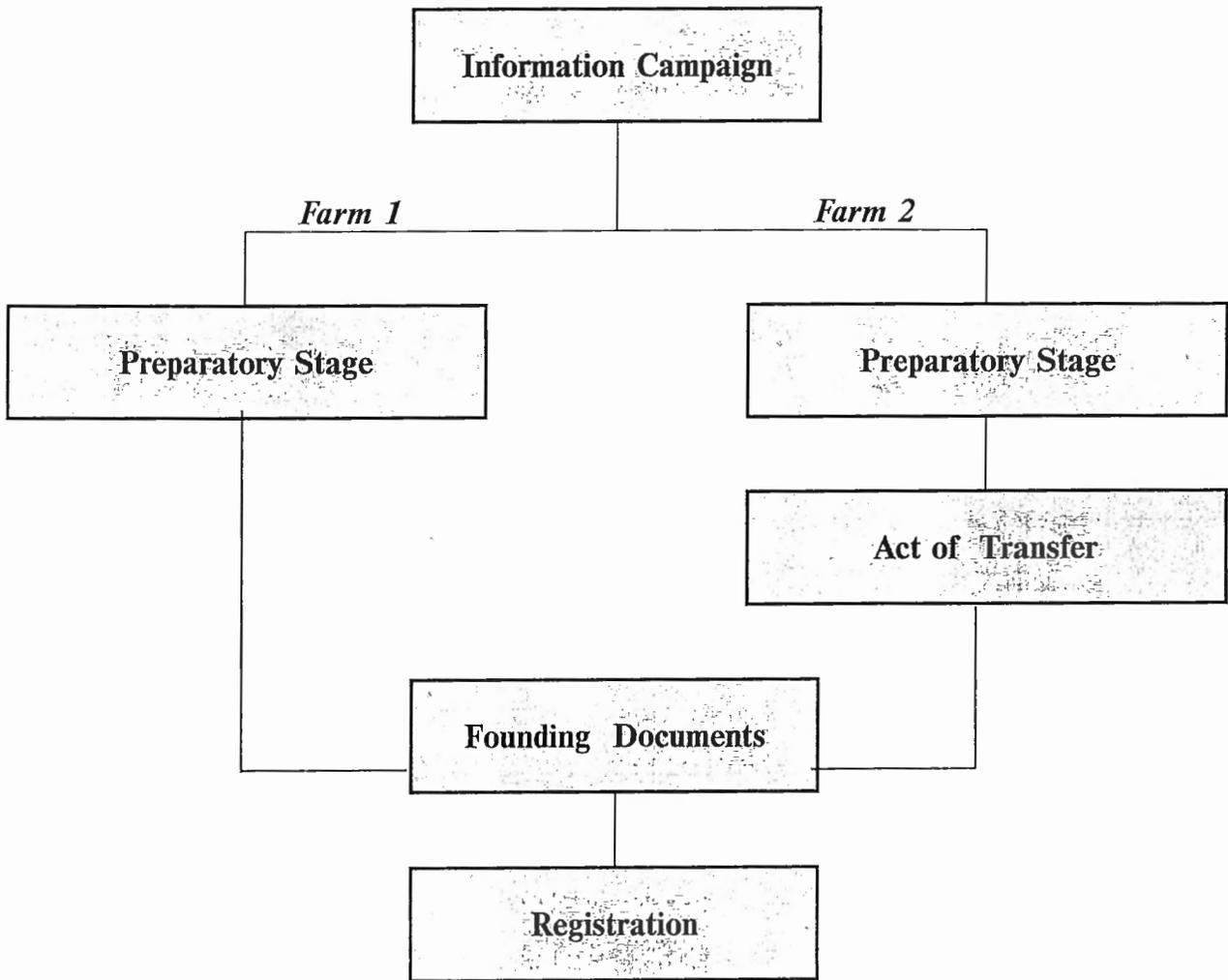
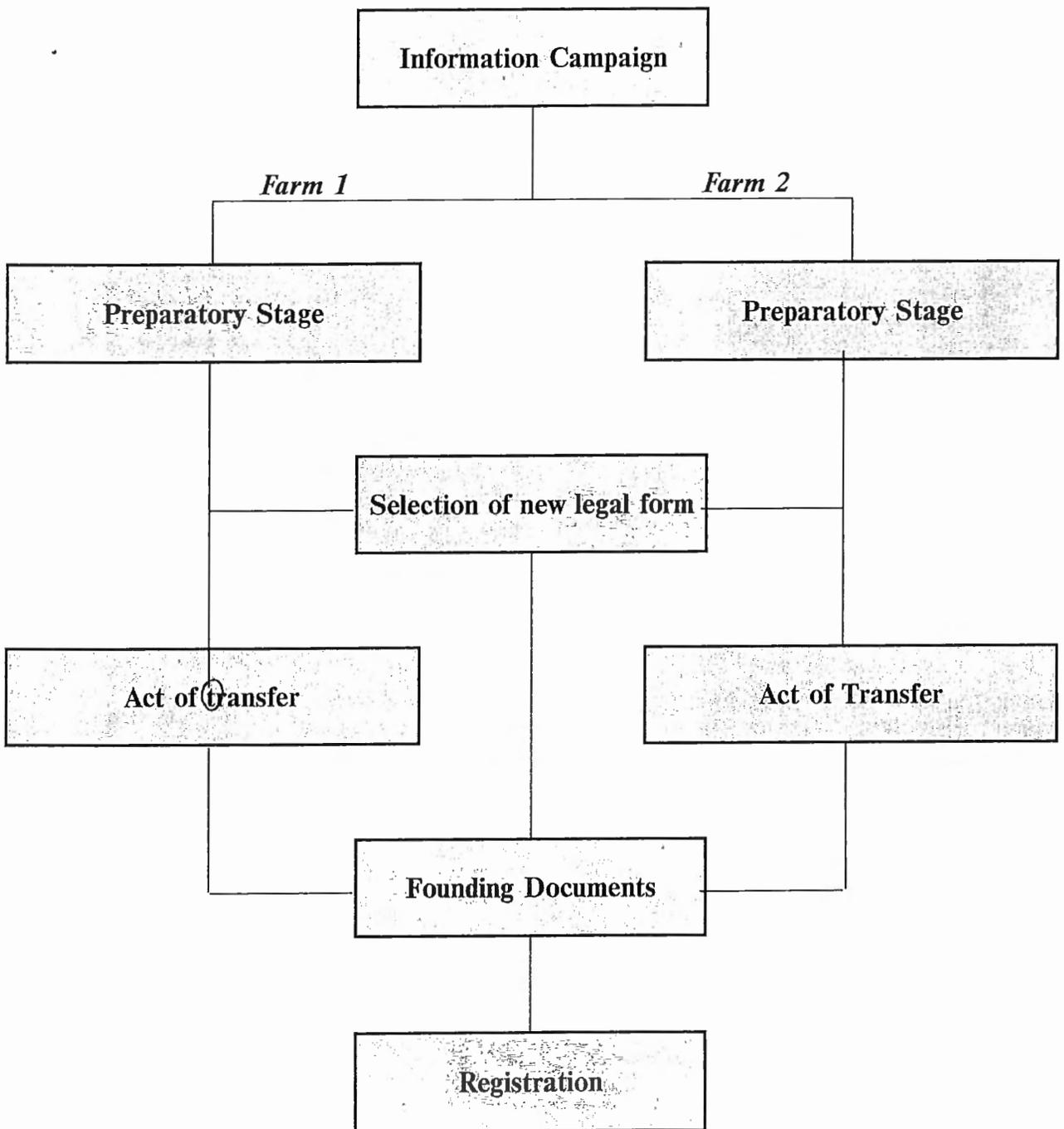


Chart of Farm Reorganization in the event of merger



1.3. Legal Basis

The procedures for **land privatization and farm reorganization** employed during the first stage of reorganization have been endorsed in RF Government Resolutions No. 86 (December 29, 1991) and No. 708 (September 4, 1992), the Decree of the President of the Russian Federation No. 1767 (October 27, 1993), and a number of other legal documents.

The actual mechanism for farm reorganization was developed and tested in Nizhny Novgorod, where the intra-farm auction procedure for land and property distribution was first introduced. The experience gained in Nizhny Novgorod formed the basis for the Regulations on Reforming Agricultural Enterprises endorsed by Resolution No. 874 of the Russian Federation (July 27, 1994) (hereinafter Resolution #874) .

Procedures for the preparation and issuance of documents to land and property share owners and for the subsequent disposal of shares were later established in Recommendations endorsed by Resolution No. 96 (February 1, 1995) (hereinafter Resolution #96)..

A number of important changes in the process of reorganization were introduced at the end of 1994 with the adoption of the new Civil Code of the Russian Federation.

The specific nature of these documents are described in Chapter 2.

The general procedures and key stages of farm reorganization in accordance with the most recently passed legislation are described in the following section.

1.4. Farm Reorganization Procedures

Farm reorganization consists of several key stages, some of which are carried out simultaneously.

1.4.1. STAGE ONE: INFORMATION CAMPAIGN

A broad information campaign aimed at making farm reorganization procedures open, clear and transparent to all participants is an important aspect of farm reorganization.

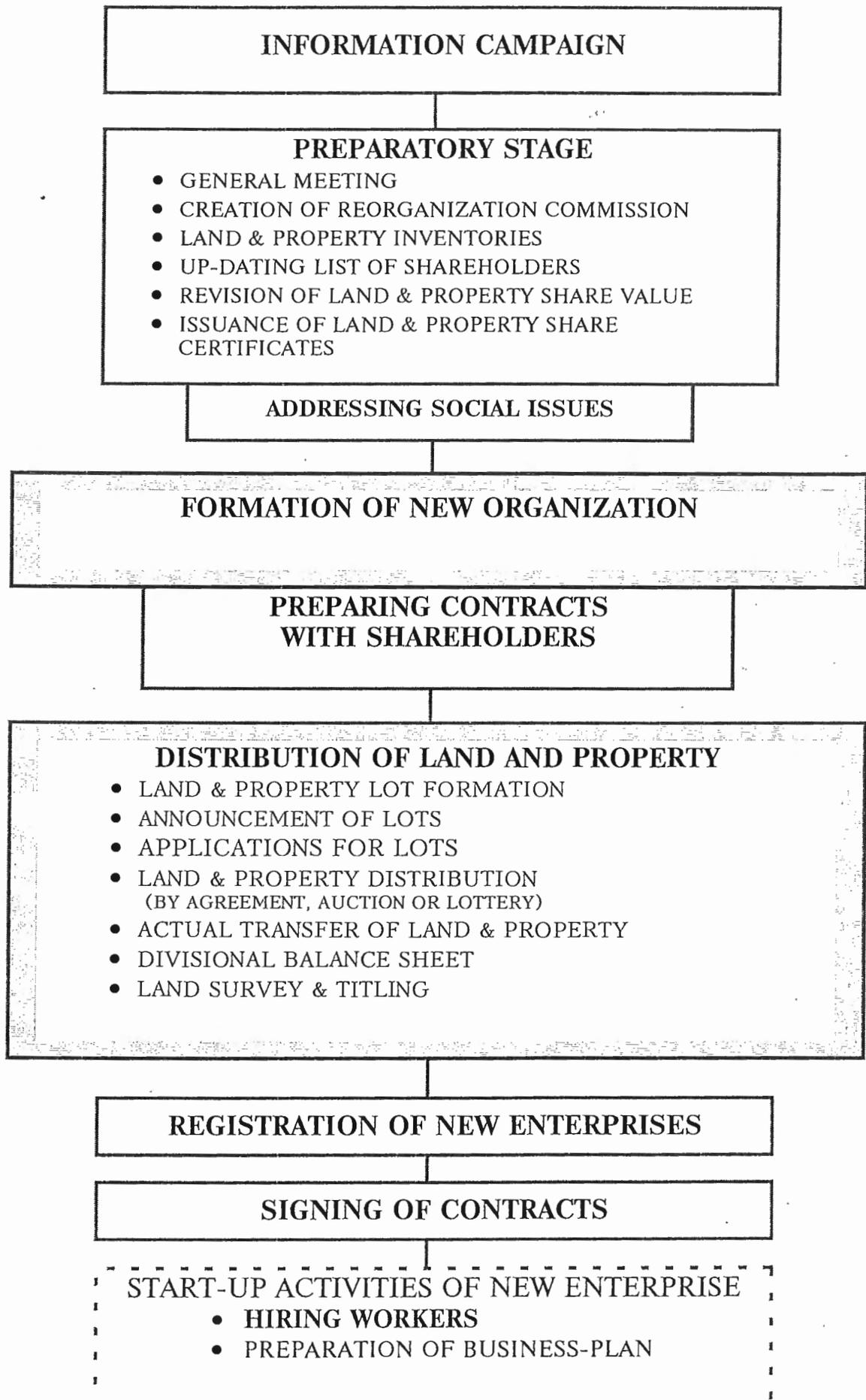
Experience shows that farm members' lack of information about their rights is one of the most serious impediments to the creation of new enterprises. If land and property share owners are not aware of their rights and do not understand the general aspects of farm reorganization, they are likely to fear change, doubt the necessity of reorganization, and create conditions conducive to fraud and embezzlement. Therefore, a properly organized information campaign is an integral part of the farm reorganization process.

The information campaign should be carried out throughout reorganization of the farm. The first stage of the information campaign is designed to communicate the aims and tasks of reorganization to the rural population and should start well before the General Meeting that will vote on reorganization. The information campaign should reach all the farm members and especially the farm's pensioners.

The information campaign entails the carrying out of the following tasks:

- Timely provision of information to land and property share owners on all key events of the reorganization process, the schedule of events, and legislation regulating their implementation;
- Creation of information desks which make available to the public legal documents governing reorganization, model documents, standard contracts, sample bid applications, and other documents;
- Organization of activities aimed at informing and educating the rural population, including the dissemination of information materials on:
 - The goals of reorganization and ways of achieving them;
 - Rights of land and property share owners and means of exercising such rights;
 - Problems faced by newly formed enterprises;
 - Methods of land and property distribution;
 - Other issues connected with reorganization;

KEY STAGES OF FARM REORGANIZATION



- Holding seminars and meetings with officials of the raion Administration, Department of Agriculture, Committee on Land Resources and Land Management, and other government organizations;
- Providing consulting services of lawyers and other specialists on different issues of farm reorganization;
- Providing information on the farm's progress throughout the reorganization process and the results achieved at different stages.

The groundwork for the information campaign will be carried out by the Intra-Farm Commission on Land Privatization and Farm Reorganization set up during the preparatory stage.

Consultants and independent experts on different aspects of reorganization, as well as the media should be involved in the reorganization process.

Specific recommendations on implementing the information campaign are contained in Chapter 3.

1.4.2. STAGE TWO: PREPARATORY STAGE

The preparatory stage represents the foundation for the establishment of new enterprises and the distribution of land and property. The main tasks to be carried out during the preparatory stage are:

- Initiation and planning of the farm reorganization process in compliance with Russian legislation;
- Issuance of certificates to all land and property owners, enabling owners to legally dispose of their shares;
- Preparatory measures for the distribution of land and property.

During the preparatory stage the following key activities must be completed:

- Holding a General Meeting of farm members (or of an authoritative farm management body) to make a decision on farm reorganization;
- Forming an Intra-Farm Commission on Land Privatization and Farm Reorganization, responsible for carrying out all the groundwork for reorganization;
- Preparing a farm reorganization schedule stating the dates for commencement and completion of all key stages;
- Updating the lists of land and property share owners;
- Drawing up the farm property inventories;
- Calculating (or recalculating) the property share;
- Preparing and issuing certificates of property share title;
- Collaborative work with the Raion Committee on Land Resources and Land Management, including:
 - Drawing up farm land inventory;

- Land share calculation, taking into consideration land quality;
- Preparation and issuance of certificates of land ownership.

Social issues are of primary importance and should be addressed as early as the preparatory stage. *Social issues* include:

- Transfer of social sphere facilities and infrastructure to the Local Administration and other organizations;
- Privatization of the housing fund owned by the farm or its transfer to the responsibility of the municipality;
- Solving the problems of socially vulnerable groups residing on the territory of the reorganizing farm.

If social issues are not resolved in a timely manner the ensuing problems will seriously impede the farm reorganization process.

The preparatory stage includes finding possible solutions to social issues and is described in Chapter 4.

1.4.3. STAGE THREE: FORMATION OF NEW ENTERPRISES.

At this stage **new enterprises are created on the basis of the reorganizing farms.** These new entities should be economically viable in a market-oriented economy.

New entities are created when land and property share owners freely exercise their right to dispose of land and property shares.

In accordance with current legislation of the Russian Federation, land and property share owners of a reorganizing farm have the following options:

- Create new agricultural commercial organizations (enterprises) of various legal forms;
- Create individual peasant farms;
- Engage in entrepreneurial activity.

The legal forms that may be adopted by ***newly formed agricultural commercial enterprises*** are enumerated in the Civil Code of the Russian Federation (1994), and include full or limited partnership, limited liability or additional liability companies, joint stock companies, and production cooperatives (artels).

New agricultural entities willing to coordinate their activities and/or to cooperate in the future may form ***non-commercial associations or unions***.

Consumer cooperatives and other non-commercial organizations that offer daily services to the population may be formed so that all persons residing on the territory of the farm will be involved in the reorganization process.

New agricultural organizations may be created on the basis of the common use of land and property shares. In the course of the formation of new enterprises, land and property share owners may contribute their shares into the charter capital of new organizations, or buy or lease shares from other share holders.

All transactions between owners must be reflected in contracts (refer to Chapter 8). For newly formed enterprises and individual entrepreneurs these contracts serve as the basis for the disposal of land and property shares in exchange for actual land plots and property.

After analyzing the particular circumstances on the reorganizing farm, land and property share owners, independently and at their own volition, decide which type of organization to create and which of the newly formed enterprises to join.

The process for the creation of new agricultural enterprises (described in Chapter 5) entails:

- Ground work aimed at the creation of new enterprises (setting up of a promotion group, holding of an organizational meeting, etc.);
- Preparation of the founding documents;
- Negotiations with land and property share owners to determine terms and conditions for the disposal of shares;
- Preparation of the appropriate draft contracts--lease, purchase-sale, gift, etc., (Chapter 8).

If a share owner sells, rents or makes a gift of his share to *another share owner*, the contract between these two parties may be signed and finalized at this stage. Contracts between a share owner and *a newly formed enterprise* are signed and finalized after state registration of the enterprise.

The stage of enterprise formation is concluded upon state registration of the enterprise. However, in compliance with the new Civil Code, enterprises are registered with the state upon submission of the founding documents, the acceptance report, and the divisional balance sheet of the reorganizing farm.

The Oblast Administration can adopt special measures to facilitate the registration of new agricultural enterprises created as a result of farm reorganization (e.g. by permitting the registration of new enterprises before the preparation of the divisional balance sheet).

If special measures are not taken, this stage ends when founding documents are prepared and drafts of contracts with land and property share owners are drawn up. State registration of enterprises (see Chapter 7) is done after distribution of land and property and preparation of a divisional balance sheet to reflect the results of distribution.

Contracts between new enterprises and owners of land and property shares should be signed after the registration of the new enterprises (see Chapter 8).

1.4.4. STAGE FOUR: LAND AND PROPERTY DISTRIBUTION

Land and property distribution, one of the key stages of farm reorganization, represents the foundation for the future activities of the newly established enterprises.

At this stage land and property is distributed among newly formed enterprises and individual owners willing to set up peasant farms or pursue individual entrepreneurial activity.

In the process of distribution these organizations and individual owners can obtain *in kind* agricultural land, buildings, equipment, machinery and other property needed for economic activity.

Land and property can be obtained only for the purpose of agricultural production or for providing agricultural services.

Procedures for land and property distribution must be open and transparent in order to keep participants informed and to prevent the occurrence of unfair practices and conflicts during farm break-up.

The distribution of land and property must be based on *actual circumstances and must conform with the number and size of land and property shares available to the land and property bidders.*

Land and property distribution is organized by the Intra-Farm Commission.

Land and property can be distributed according to one of the following methods:

- Agreement among participants;
- Intra-farm auction;
- Lottery;
- Tender (*konkurs*).

The choice of a distribution method is determined by the particular circumstances of each farm and by the probability of reaching an agreement among the participants.

The decision as to which distribution method to use shall be taken either at the farm General Meeting or by the Intra-Farm Commission, provided that the General Meeting entrusts it with the authority to do so.

Irrespective of the distribution method chosen, *the process of preparing and conducting the land and property distribution consists of several steps aimed at making this process open and fair:*

- Preparation for land and property distribution, which includes:
 - Preparation of lists of land plots and property units (lots) intended for distribution;
 - Public disclosure of lot lists and information on important dates and distribution procedures;
 - Collection of applications from new enterprises and individual owners for land sites and property units;

- Organization of distribution procedures according to one of the above methods of distribution;
- Post-auction procedures by which new owners receive land plots and property units in kind.

Following the land and property distribution, acceptance certificates and divisional balance sheets are prepared, certificates of title to land sites are issued, land management work is carried out, and other necessary measures are taken.

Land and property distribution during farm reorganization is described in Chapter 6.

1.4.5. STAGE FIVE: REGISTRATION OF NEW ENTERPRISES AND INDIVIDUAL ENTREPRENEURS

Upon the completion of land and property distribution by the reorganizing farm the newly established legal entities and individual entrepreneurs are registered.

Participants of new organizations sign founding agreements and adopt their new charters. These documents are accompanied by other documents including the acceptance certificate and the divisional balance sheet of the reorganizing farm.

Legal entities and individual entrepreneurs are registered in accordance with existing rules at special departments of the Local Administration (see Chapter 7).

Registration of newly-established enterprises is of special significance because according to the Civil Code of the Russian Federation (Part 51), *a legal entity is considered to be created from the moment of its State registration.*

1.4.6. STAGE SIX: FINALIZING CONTRACTS

At this stage land and *property share owners conclude contracts with newly-established enterprises*, including contracts for lease, sale and purchase, deeds of gift and exchange. Recommendations for the development of these and other possible forms of contracts are described in Chapter 8 and Appendices thereof.

Drafting of these contracts and deeds shall be carried out during the process of creating new agricultural enterprises and prior to land and property distribution.

Contracts between owners of land and property shares (whether for sale, lease or gift of a share from one owner to another) may be *signed prior to land and property distribution.*

Contracts between an owner of a land and property share and a newly established enterprise can be signed only after the registration of the enterprise, since such contracts must be stamped with the seal of the newly formed enterprise.

All land transactions *must be registered* at the Local Committee on Land Resources and Land Management, with some types of contracts requiring notarization.

1.4.7. STAGE SEVEN: ORGANIZING THE ECONOMIC ACTIVITIES OF NEWLY ESTABLISHED ENTERPRISES

The registration of the newly-established enterprise is a watershed moment, marking:

- *the completion of the reorganization process;*
- *the commencement of the new enterprise's economic activity.*

From the moment of registration, the manager of the new enterprise has the authority to *hire workers* (Chapter 9), manage and supervise the economic activities of the enterprise, as well as other rights and responsibilities.

While hiring workers the manager must take into account the needs of the enterprise in terms of workers, their specialization, qualifications, etc. Contribution of a land or property share to the newly created organization (with the exclusion of production cooperatives, or artels) does not guarantee a job in the organization.

If the new enterprise is to function effectively, it is necessary to prepare a **strategic business plan** that specifies

- the primary areas of the enterprise's activities;
- the main types of products;
- the marketing strategies and marketing channels to be used;
- the expected volume of production, an estimate of production costs and expected market prices; necessary capital investments; rent, taxes, and expected profit; and other economic factors.

Calculations and estimates should serve as the basis for the determination of the management and production structures of the new enterprise.

CHAPTER TWO

THE LEGISLATIVE BASIS FOR FARM REORGANIZATION

Contents:

- 2.1. Relevant Legislation (1990-1995)
 - 2.2. The New Civil Code of the Russian Federation (1994)
-

2.1. Relevant Legislation (1990-1995)

Subjects of reorganization are citizens and legal entities. Their main characteristics are shown in Tables 1 and 2.

Farm reorganization is regulated by the following legislative documents:

2.1.1. *The Constitution of the Russian Federation (adopted at the national referendum on 12 December 1993)* provides for private, state and other forms of ownership of land and other natural resources (Article 9). Pursuant to Article 36, citizens and other organizations have private ownership rights with respect to land. The ownership, use and transfer of land and other forms of natural resources can be freely carried out by their owners, provided it does not cause any damage to adjoining property or violate the rights or legal interests of other persons.

2.1.2. *The Law of the RSFSR On Peasant Farms (22 November 1990)* with amendments. The law defines the economic, social and legal bases, as well as the activities of peasant farms and their associations on the territory of the Russian Federation.

2.1.3. *The RSFSR Law On Enterprises and Entrepreneurial Activity (25 December 1990)* enables farmers to choose a legal form for their newly created enterprises: private enterprises, including the following: full partnership, limited liability partnership, mixed partnership, open joint stock company, or closed joint stock company.

2.1.4. *The Land Code of the RSFSR (25 April 1991)* establishes government ownership of land and ownership of citizens and their collectives (jointly or in shares). The Land Code also establishes the right of land ownership by shares, by filing appropriate documents.

2.1.5. *Resolution No. 86 On Reorganizing Collective and State Farms (29 December 1991)* gives all members of collectives and employees of state farms, including retired pensioners the right to receive land and property shares out of the general holdings of the enterprise, without charge. By decision of the collective, farm land and property shares may be given to workers in the social sphere located on the territory of the farms. The Resolution also sets forth the permitted uses of these land and property shares.

2.1.6. Regulations On the Reorganization of Collective Farms, State Farms and the Privatization of Government Agricultural Enterprises, approved by RF Government Resolution No. 708 (4 September, 1992). These regulations set forth fundamental procedures for reorganization and privatization of agricultural enterprises, including the procedures for defining:

- individual land and property shares;
- the legal and organizational form of enterprises founded as a result of reorganization of collective and state farms;
- special provisions for the reorganization and privatization of specific agricultural enterprises.

2.1.7. Presidential Decree No. 1767 On Regulating Land Relations in the Development of Agrarian Reforms in Russia (27 October 1993). This Decree facilitates the transition from the first stage of reorganization to the second by substantively broadening the land ownership rights of citizens and legal entities. Point 5 of the Decree is especially significant. It grants owners of land shares the right, without the consent of other owners, to receive a land plot for purposes of setting up an individual peasant farm, or for mortgaging or renting the land. It also expands the maximum limit of land plots which can be used for personal use and individual residential purposes; provides for the exchange of land shares for property shares, the inheritance of land shares, and the redemption of the value of land shares upon their acquisition by the collective; and grants the right to recoup damages including lost profits, in connection with the use of land.

2.1.8. Program of Agrarian Reforms for 1994-95, endorsed by Resolution No. 791 (6 June 1994), confirms the continuation of reforms in the agricultural sector. During the transformation process, the Russian government will permit voluntary choice regarding the forms of economic activity to be undertaken and will encourage reorganization in accordance with the decisions of the owners of land and property shares.

2.1.9. Resolution No. 874 On Reforming Agricultural Enterprises, Based on the Nizhny-Novgorod Experience (24 June 1994), confirmed regulations on reforming agricultural enterprises based on the practical experience of a pilot project in Nizhny Novgorod oblast. The basic contents of this reform model include the break up of agricultural enterprises into several partnerships, companies, cooperatives and individual peasant farms, and a mechanism for in kind allocation of the land and property of reforming agricultural enterprises among new organizations and peasant farms. Important features of reorganization provided for in this Resolution are the unification of land and property shares of reforming enterprises and the auction process.

2.1.10. Resolution No. 96, On Procedures for Implementing Rights of Land and Property Shareholders (01 February 1995) sets forth the procedures for the reorganization of farming organizations, the methods for distributing land and property shares, and the conditions for in-kind allocation of land and property shares.

2.2. The New Civil Code of the Russian Federation (1994)

On January 1, 1995, Part One of the new **Civil Code** (hereinafter "*Civil Code*") of the Russian Federation, adopted by the State Duma on October 21, 1995, came into effect and established significant changes in the theory and practice of formation and operation of legal entities.

The main types of legal entities, provided for by the Civil Code of the RF, are shown in Table 3.

2.2.1. Commercial and Non-Commercial Organizations

Article 50 of the Code sets forth criteria for distinguishing between commercial and non-commercial organizations. Commercial organizations include organizations formed with the goal of making a profit. Non-commercial organizations include public, religious, political and other non-profit organizations whose earnings are not distributed among the founders. In other words, non-commercial organizations can carry on entrepreneurial activities only to the extent that these activities are related to their not-for-profit objectives.

As applied to farm reorganization, consumer cooperatives can be organized as non-commercial organizations. The basic objective of such organizations is to satisfy the social needs of its founders and members. For example, a farm repair shop that was previously part of a reorganized farm can be reorganized as a consumer cooperative that provides repair services for farm equipment owned by its founders. Additionally, the cooperative can provide services to the general population.

The Civil Code introduced significant changes regarding the forms of legal entities that may be adopted. Commercial organizations may be created in the form of partnerships (full or limited), or societies (limited liability, additional liability, or joint stock societies).

2.2.2. The Reorganization of Legal Entities

The most relevant legal norms involving the foregoing issues are the provisions of the Civil Code which apply to the reorganization of legal entities (Articles 50 to 60).

- Reorganization can be carried out based on the decision of the founders (shareholders) or a body of the legal entity that is empowered to do so by the company's charter. In certain cases provided by law, the reorganization of the legal entity is carried out according to the decision of a governmental body or court order.
- Reorganization of a legal entity can be carried out in the form of merger, acquisition, division, separation or transformation into another legal form:
 - in the event of *merger* -- the rights and duties of each legal entity are transferred to the newly created legal entity in accordance with the act of transfer;

- in the event of **acquisition** -- the rights and duties of the acquired entity are transferred to the acquiring entity in accordance with the act of transfer;
 - in the event of **division** --rights and duties are transferred to newly created entities in accordance with the divisional balance sheet;
 - in the event of **separation** of one or several legal entities--rights and duties of the reorganized entity are transferred to newly created entities in accordance with the divisional balance sheet;
 - in the event of **transformation** of one legal entity into another legal entity (change of legal form)--the rights and duties of the reorganized entity are transferred to the newly created entity in accordance with the transfer act.
- With the exception of an acquisition, the legal entity is considered reorganized **from the moment of its registration**. In the event of reorganization by acquisition by another entity, the first of them is considered to be reorganized from the moment of making an entry in the Russian State Register of Legal Entities which terminates the activities of the entity which has been acquired.
 - **The transfer act and divisional balance sheet** must contain an assignment of all rights and obligations of the reorganized legal entity in connection with its creditors and debtors, including disputed obligations or claims.

The transfer documents and divisional balance sheet must be approved by the founders (members/shareholders) or the executive organ of the entity that took the decision to reorganize. These documents are then presented for government registration together with the charter or other founding documents of the new legal entity or, if applicable, the amended charter of the previous, reorganized entity.

In the event that one or more of the required documents are submitted without the new charters and/or other founding documents, such as the transfer act, divisional balance sheet or assignment documents, the local governmental authorities can refuse to accept the documents of the new legal entity(ies) for registration.

- After the founding members of a legal entity decide to reorganize, they are obligated to **notify the creditors** in writing about the reorganization.
- **The creditors** of a reorganizing legal entity have the right to demand termination or early satisfaction of all obligations or loans, plus damages, if any, from the reorganizing legal entity. If the divisional balance sheet does not set forth the transfer of rights and obligations, the newly created legal entities arising from the reorganization have joint liability for all debts and obligations to creditors of the previous organization.

2.2.3. Liquidation of a Legal Entity

The liquidation of a legal entity entails the termination of its existence as a legal entity, without the transfer of any rights or obligations to other persons or entities. A legal entity can be liquidated:

- by decision of its founders (members/shareholders);

- by a body empowered by the entity's charter to take a decision on liquidation;
- by court decision upon a determination that there were errors in connection with the original registration or that a violation of law took place which cannot be rectified;
- by court decision in the event of unlawful activity or absence of proper licenses;
- in the event of serious or repeated violations of the law;
- in case the legal entity is deemed insolvent (Art. 65 of the Civil Code).

The founders (members/shareholders) or the executive body of a legal entity, having decided to liquidate, are required, upon agreement of the local authorities that maintain the State Register of Legal Entities, to appoint a Liquidation Commission that establishes the procedures and term for the liquidation of the entity.

The liquidation is considered completed and the legal entity to have terminated its existence after entries thereof have been made in the State Register of Legal Entities (see Tables 6 to 9).

Legal Entities

as regulated by civil legislation

Articles 48-65 Civil Code of the RF

Legal entities effectuate their civil rights by their own will and in their own interest. They are free to establish their rights and duties by contract and to determine any contract term not contrary to legislation.

An organization is deemed to be a legal entity if:

- **it exclusively controls property either through:**
 - **ownership rights**
 - economic jurisdiction or
 - operative management
- **it is liable for its obligations with such property**
- **it may in its own name acquire and make effective property and personal nonproperty rights**
- it may have property-based duties
- it may be a plaintiff or defendant in court
- it has an autonomous balance sheet.

The rules established by civil legislation apply to relations with

- **foreign legal entities**

The Russian Federation, subjects of the Russian Federation, and municipal formations may participate in relations regulated by the civil legislation on an equal basis with citizens and legal entities.

Citizens (natural persons)

participants of relations regulated by civil legislation

Articles 18, 23, 24 Civil Code of the RF

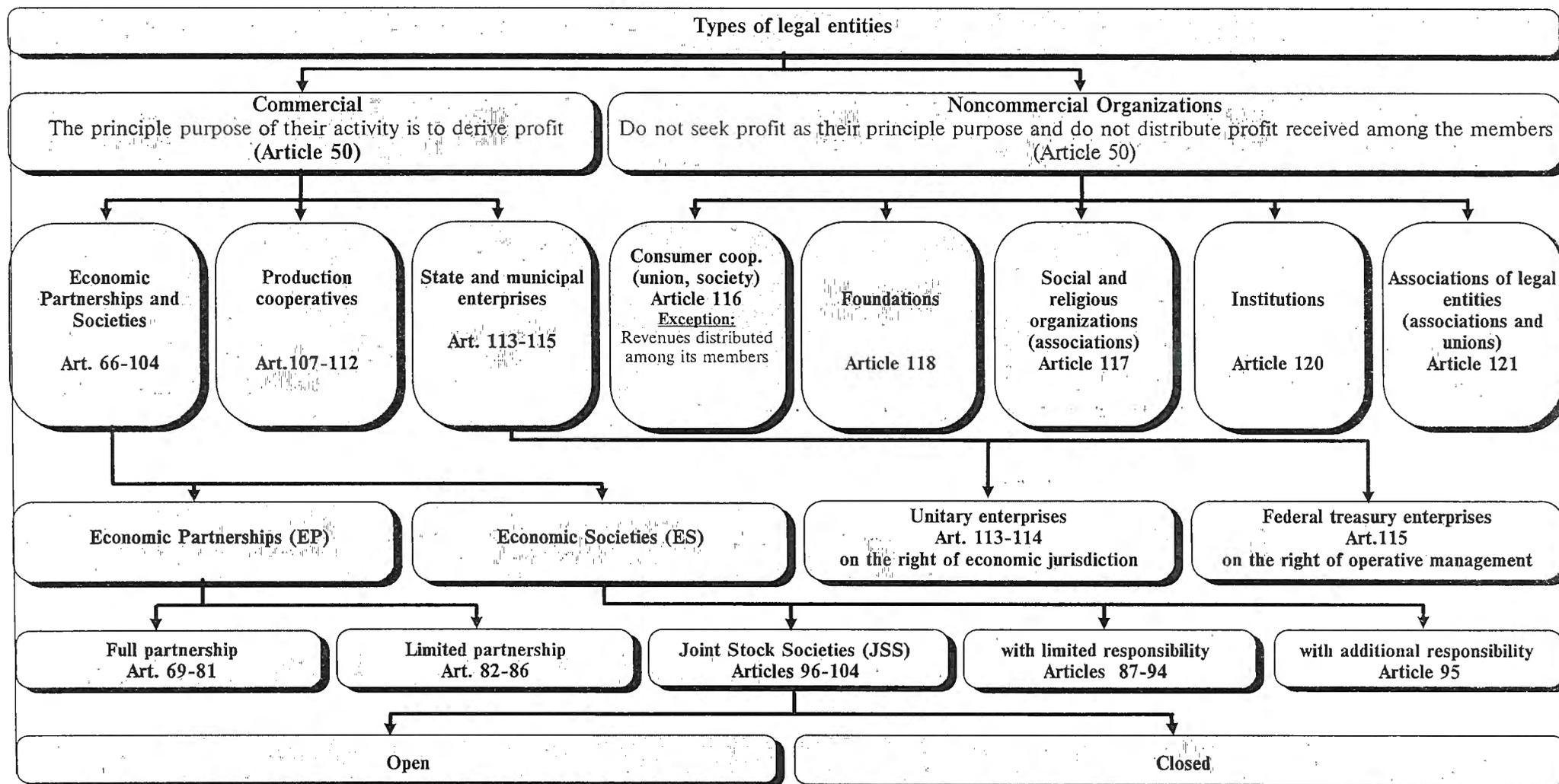
Citizens effectuate their civil rights on their own free will and in their own interest. They are free to establish their rights and duties by contract and to determine any contract term which is not contrary to legislation.

- *A citizen has the right to engage in entrepreneurial activity without the formation of a legal entity from the moment of his/her registration as an individual entrepreneur. He/she may also form legal entities individually or together with other citizens*
- *A citizen is personally liable for the obligations*
- *The head of an individual farm undertaking activity without the formation of a legal entity is deemed to be an entrepreneur from the moment of State registration of the individual farm*
- *The rules regulating the activity of legal entities also apply to the entrepreneurial activity of citizens effectuated without the formation of a legal entity*

The rules established by civil legislation also apply to relations with the participation of:

- **foreign citizens**
- **stateless persons** unless provided otherwise by a special legislative act

The Russian Federation, subjects of the Russian Federation, and municipal formations may participate in relations regulated by the civil legislation on an equal basis with citizens and legal entities.



According to the provisions of Art.48 of the Civil Code legal entities:

1. have exclusive property in ownership, either by economic jurisdiction or by operative management;
2. are deemed liable for their obligations;
3. may acquire and realize property and personal nonproperty rights, and bear property-based duties;
4. can be a plaintiff or defendant in court.

Reorganization of legal entity: change of legal status

Reorganization is carried out:

- *by decision of its founders (or participants)*
- *with the consent of the empowered legal entity in accordance with its founding documents*
- *by decision of empowered State agencies or court decision (if a deadline is not met an external administrator may be appointed)*

Types of Reorganization	Legal Succession	
	who succeeds	document
Transformation - change of legal form	the newly created entity	Transfer Act
Merger of several legal entities and formation of a new legal entity		
Acquisition of the existing legal entity by another one	the entity that takes over	Divisional balance sheet
Division into several legal entities	newly created legal entities	
Separation of a new legal entity out of the remaining one		

The legal entity is considered to be reorganized from the moment of State registration of the newly created legal entities (in case of acquisition - from the moment of making an entry into the State register concerning the termination of activity of the legal entity which has been acquired)

Reorganization of an Economic Partnership (EP) or Society (ES)

Types of EP (ES)	Grounds for reorganization	Can be transformed into:
Full EP	<u>By decision of:</u> <ul style="list-style-type: none"> • founders • empowered state agencies • court <u>If only one partner is left</u>	ES (LRS, ARS) (within 6 months)
Limited Partnership	<u>By decision of:</u> <ul style="list-style-type: none"> • founders • empowered state agencies • court <u>Withdrawal of all the contributors</u>	full EP (by the decision of full partners)
LRS ARS	<u>By the decision of:</u> <ul style="list-style-type: none"> • all its participants • empowered state agencies • court 	JSS or production cooperative
JSC	<u>By decision of :</u> <ul style="list-style-type: none"> • empowered state agencies • court • general meeting of stock holders 	LRS or production cooperative

Liquidation of a legal entity entails the termination of its rights and duties without the transfer to other entities

- A legal entity may be liquidated in connection with:
 - the expiration of its designated period of existence
 - the achievement of the purpose for which it was created
 - a court decision deeming its registration to be invalid

- A legal entity may be liquidated **by court decision** in the event of activity
 - without proper license
 - prohibited by law or by repeated or representing flagrant violations of legislation
 - contrary to its charter purposes

- A legal entity which is a commercial organization (with the exception of treasury enterprises) or a consumer cooperative, or a foundation may be liquidated if it is deemed to be bankrupt (voluntarily or by joint decision with creditors).

An EP is liquidated in the event of:

- the withdrawal of its participants
- death of a participating natural person
- liquidation of a participating legal entity
- the absence of one of its participants for unknown reasons
- incompetence (of a participant)
- partial incompetence (of a participant)
- bankruptcy
- court initiation of reorganization with respect to one of the participants
- an executory document levied on the on participatory share of a participant in the contributed capital

unless it has been provided by the founding agreement that the partnership shall continue its activity

Liquidation Commission

The founders (or participants) of a legal entity or agency which adopted a decision to liquidate, by agreement with the State registration agency, appoint the liquidation commission and establish the procedures and periods for liquidation.



places in the press a notice concerning the liquidation of the legal entity, the procedure and periods for creditors to declare demands (no earlier than two months from the moment of publication)

takes measures to elicit creditors and collect debts owed to the legal entity



draws up **the interim** liquidation balance sheet (after the end of the period for the presentation of demands by creditors), which is to be confirmed by the legal entity which adopted the decision to liquidate in agreement with the State registration agency

organizes public sale of property of the legal entity if its cash assets are insufficient to satisfy the demands of creditors



pays debts to satisfy the demands of creditors in order of priority after confirmation of the interim balance sheet



after settlement of accounts with creditors draws up a liquidation balance sheet



property remaining after satisfaction of creditors is transferred to the founders (participants) having rights in this property or rights of obligation

Table 9

Demands of creditors are satisfied in the following priority:	
Priority	Creditors
1	citizens to whom the legal entity bears responsibility for causing physical harm
2	accounts with regard to payment of <i>severance pay</i> or <i>wages</i> of persons working under a labor agreement
3	demands of creditors relating to obligations secured by the <i>pledge</i> of property of the legal entity
4	indebtedness relating to obligatory payments to the State's <i>budget and extrabudgetary funds</i>
5	<i>other creditors</i> - get paid one month after confirmation of the balance sheet

CHAPTER THREE

THE INFORMATION CAMPAIGN

Contents:

- 3.1. Principles
 - 3.2. Responsibilities of the Commission for the Information Campaign
 - 3.3. Practical Recommendations for Organizing an Information Campaign
-

3.1. Principles of an Information Campaign

3.1.1. Purpose of the Information Campaign

An information campaign in support of reorganization is aimed at reaching all farm members and providing them with detailed information on:

- every stage of the reorganization process and related events;
- the rights of and opportunities of owners of land and property shares.

An additional task of the information campaign is to assist in organizing an exchange of information between new agricultural enterprises and local financial institutions; servicing, trade and procurement organizations; and insurance and tax organizations and other institutions. The exchange of information is necessary for the creation of a fully-fledged marketing infrastructure around the reorganized enterprises.

3.1.2. Important Aspects of the Information Campaign

- The Information campaign is carried out by the Intra-Farm Commission on Land Privatization and Reorganization (hereinafter "the Commission"), in accordance with legislation of the Russian Federation regarding reorganization of agricultural enterprises (Resolution #874).
- The campaign should reach all farm members and prospective owners of land and property, with special attention paid to pensioners.
- The campaign should create conditions for a free exchange of information among reorganization participants, provide the necessary information to all interested parties and enhance the economic awareness of the population.
- The information campaign should be carried out in all populated areas where owners of land and property shares reside.
- Only accurate and verified local and general information about reorganization should be disseminated in the course of this campaign.
- An information campaign in support of farm reorganization should not be limited to the organization of narrowly targeted events. Some efforts should also be made to create a demand for general information and education on reorganization. Such demand usually arises when people get the initial information. As a rule, people involved in reorganization quickly realize the importance of having more complete information about the process. What a person gets from reorganization in many cases depends on his/her personal level of knowledge and correspondingly on his decisions taken individually and as part of a group.

- When developing a complex of measures for a specific farm it is necessary to take into consideration its social and economic conditions. An information campaign should be tailored for a particular farm, whether it is strong, weak, of average strength or on the brink of bankruptcy.

3.1.3. Enlisting Outside Assistance

- When necessary the Commission should use the services of farm managers and specialists, independent experts and consultants.
- Special importance should be placed on the professional support of lawyers.
- Assistance should also be sought from government organizations: the Local Administration, local State Property Management committees, Departments of Agriculture, the Land Resource Committee, as well as financial structures, including specialized banks, trade and procurement and servicing and supply organizations. If outside assistance is sought, one should start with regular information from different organizations about processes taking place on the farms, new opportunities and possibilities for mutually beneficial cooperation.
- Mass media is used to cover the process of reorganization. Dynamic processes taking place on the reorganizing farms can be used by local journalists specializing in agriculture for their articles and publications.

3.2. Responsibilities of the Commission for the Information Campaign

3.2.1. Establishment of Information Centers

The Commission should establish information centers, including mobile ones, and inform all farm residents of their opening date, location and working hours. The following information should be available at each Center:

- Legal documents on reorganization, including Resolutions No. 874 (July 27, 1994) and No. 96 (February 1, 1995);
- A farm reorganization plan with a schedule of the main stages;
- Model forms for rent, purchase and gift agreements concerning land and property shares;
- Lists of agricultural enterprises, farms and individuals willing to conclude agreements;
- Recommended rent payments;
- Other information materials on reorganization, clips from such periodicals as "Rossiyskiy Fermer", "Krestyanskiye Vedomosty", "Niva Rossiy" and other specialized editions.

Special boxes should be installed for written questions of farm members. All questions should be discussed by Commission members and if necessary, referred to the corresponding local Administration specialists, the Department of Agriculture, the local KI, the Land Resources committee and other institutions.

3.2.2. Securing Rights Via Proper Documentation

The Commission must provide all land and property share owners with blank samples of documents necessary to secure their rights, as well as instructions for filling them out.

3.2.3. Informing Share Owners of Developments in the Reorganization of the Farm

The Commission must monitor the reorganization process and inform all land and property share owners of developments as they occur.

The Commission is responsible for notifying share owners of:

- the formation of new agricultural entities and their managers;
- the schedule for submitting applications for land and property as well as the status of these applications;
- rules and deadlines for land and property distribution.

3.2.4. Consultation Duties of the Commission

The Commission must carry out educational work among land and property share owners, organize meetings, and consult on:

- the rights of share owners;
- alternatives for disposing of land and property shares;
- organizational and legal differences between entities of various types;
- rules for concluding agreements;
- methods for calculating rental payments;
- methods of appraising the right to use land when it is contributed to the authorized capital;
- options of land and property distribution, including auction rules;
- other reorganization issues.

The farm reorganization campaign should rely on the assistance of the local administration, the Department of Agriculture, the Land Resources committee and other organizations. It should make use of national and local press publications.

3.3. Practical Recommendations for Organizing an Information Campaign

3.3.1. Information Work before the General Meeting

Current legislation requires that all participants in reorganization be notified of the General Meeting. As mentioned previously, the Commission is responsible for the on-farm information campaign. However, the Commission is formed and approved at the General Meeting, and farm members have to be notified of the meeting and its agenda beforehand. Therefore, *the first step in an information campaign should be to appoint a person responsible for notifying farm members of the General Meeting* and providing general information regarding the content and purpose of the general meeting.

Before the General Meeting, the following information should be made public:

- Dates and locations of the General Meeting and other events;
- Lists of candidates for the Intra-Farm Commission and brief data on them;
- Any other information directly related to the General Meeting on reorganization.

After the Commission has been formed and approved at the General Meeting, it continues to carry out further information work.

3.3.2. Information Campaign at the Farm Level

3.3.2.a. Appointing a Person to Direct the Information Campaign

The Intra-Farm Commission on Reorganization determines which of its members is in charge of the dissemination of information. The major task in disseminating information is to educate and explain to each shareholder of land and property the practical implications of reorganization.

3.3.2.b. Methods for Disseminating Information:

- *Organizing Orientation Meetings and Consultations* with the representatives of the Local Administration, the Department of Agriculture, the Land Resources Committee, the local KI, and consultants in legal, financial and other areas. Orientation meetings, seminars and round-table discussions with the participation of experts educates the Commission members as well as the most active shareholders of the reorganizing farm. General issues are usually covered at seminars, whereas round-table discussions focus on more specific reorganization issues.

Round-table discussions should be organized with the participation of experts, researchers and representatives of the local administration, state institutions, operating agricultural and processing enterprises, banks, tax service entities, etc. These experts can answer questions of the Commission members and those of interested farmers, among whom may be potential leaders of new farms.

- ***Distributing information materials, booklets and local newspapers*** containing special information, as well as special issues and programs of the local mass media. These materials can be of special assistance to the person responsible for the information and educational campaign on the farm.

Printed information materials may be produced on the farm by the person responsible for the information campaign in cooperation with Commission members.

Information leaflets are easy to develop locally, they can be printed on plain paper. Leaflets can explain the aims of reorganization, its implications and its different stages; interpret legislative acts and norms; and give competent answers to the most common questions.

The content of information leaflets to a large degree depends on the situation on the reorganized farm, the stage of reorganization and the needs of the population.

As a rule leaflets are either placed on information bulletin boards, handed to households by the Commission members or leaders of new enterprises, or delivered by mail.

Persons responsible for the information campaign and members of the Commission can get **information and education booklets** in support of reorganization from raion and oblast administrations, the Department of Agriculture, the local KI or independent consultants.

As mentioned previously, close cooperation between persons responsible for the information campaign and local press, especially raion newspapers, is very important not only because the press can render support to reorganization but also because it can be used as a means of informing all interested parties, primarily share owners, of the dates, periods, location and status of specific events.

Often enough this information can be published in raion newspapers free of charge. This can be done, for instance, if raion newspapers are regularly supplied with information about the on-going development of farm reorganization. Editors develop an interest in the process thus creating a demand for more such information. Local administrations as a rule are capable of rendering assistance in this respect.

- ***Setting up bulletin boards*** on the farms undergoing reorganization. These boards can be installed in the central village, often near the place where the Commission works or in the central farm office. Other boards can be placed in

most public areas - near stores and clubs of the most populated villages, or at the largest production units.

At the beginning of reorganization information bulletins give general information on agricultural reforms, the stages of farm reorganization, places where the Commission works, its composition and functions and duties of its members. As reorganization proceeds more attention should be paid to operational information, and more space on the board should be devoted to materials explaining farm reorganization, the sequence of activities, extracts of corresponding legislative documents such as those regulating disposal of land and property shares and thematic clips of local and national newspapers.

Bulletins containing the following information can be placed on the boards:

- rules and dates for various meetings;
- land and property distribution methods;
- inventory results;
- lists of share owners;
- share calculation methods;
- rules for concluding and registering agreements.

Different boards can be devoted to different topics such as:

- the right of ownership, land and property shares and legal issues;
- stages of reorganization;
- organizational and legal differences between different types of entities;
- topical information on the current stage of reorganization.

The Commission members should regularly check the condition of the bulletin boards and update information when necessary.

In general bulletins are used to support other activities and to fulfill such reorganization tasks as updating lists of share owners, forming land and property lots, etc.

- **Organizing mobile information centers** to operate in remote areas.
- **Organizing village assemblies** can be of great importance. These assemblies have some positive aspects, as they involve different groups of population in reorganization and bring intensive information to bear pressure on them. They also permit
 - the evaluation of the attitude of people on the farm in general, and
 - a determination of tactics needed to work with the population.

The customary character of this type of activity should be especially stressed.

One problem related to the organization of an assembly is that people must be brought from remote areas to the central farm village. It is also difficult to check whether information was correctly understood by many individuals.

As more information becomes available to the population, meetings and assemblies become less important. They are superseded by talks with individuals and detailed explanation of different aspects of reorganization.

- **Conducting Information Campaigns in work collectives** is important because most leaders of new agricultural enterprises, organized on the basis of former collective and state farms, come from the work collectives.

As reorganization and the information campaign to support it approach their final stage, work with the leaders of new peasant farms should be intensified. There are several reasons for that:

First, enterprise leaders are most active in their search of information, they need information support because they have the greatest interest and financial risks in the reorganization process.

Second, farm leaders by themselves often disseminate information as they seek to attract land and property shares of their fellow-villagers, farm workers and pensioners. Shares are needed to form enterprises and to ensure their viability in the future.

Information and education campaign at schools is of special importance. Talks with schoolchildren are aimed at:

- educating them on their rights to inherit, own and dispose of property, as well as moral and material implications of the new ownership rights;
- drawing them into the decision making process along with their parents.

Members of the Commission and experts participate in these discussions. They explain general principles of reorganization, the rights and duties of share owners and the on-going progress of farm reorganization.

Talks with schoolchildren can also help update lists of owners and pass information on the rights of share holders about possibilities for the disposal of land and property, and the collection of applications.

It is obvious that the presentation of information to schoolchildren should differ from that aimed at other groups. Information for schoolchildren should be broken into logical blocks to make understanding easier. It should also be presented with the use of visual aids and text.

- **Individual discussions** are usually carried out by Commission members responsible for the information work. Senior students of higher education and specialized education institutions can be asked to carry out these discussions with workers, pensioners, employees, schoolchildren and other groups. Discussions coupled with assemblies are the most effective

means of informing and educating people. Individual discussions in the houses of village residents and at the information centers also have been proven effective.

Individual discussions can be tailored to the characteristics of the individuals and are a means to check whether the information was understood.

A negative aspect of the individual discussion is that it is labor-consuming, usually taking between 20 to 60 or even 120 minutes. Nevertheless, this work should be carried out throughout the information campaign.

Individual discussions become specially important at the final stage of reorganization, in the period prior to the submission of applications for the disposal of land and property shares. Questions and the need for advice arise when the campaign switches from providing general information to discussing specific questions, when share owners face choices.

Special attention in the process of organizing individual discussions should be paid to leaders of new peasant farms and to pensioners, the most passive group of the population.

Naturally, different topics should be chosen for discussions with different groups. The topics of individual discussions also change as reorganization progresses. In the beginning, general topics for discussions are selected and discussions are aimed at explaining the meaning of on-going reform. Later discussions focus on the rights and duties of share owners, and their new opportunities. In the last stage of reorganization, the discussions switch to the possibility of uniting share owners around certain leaders, and to the criteria for selecting these peasant farm leaders with a view towards concluding agreements.

Commission members often underestimate the role of pensioners in determining reorganization results. On some farms pensioners constitute up to 70 percent of share holders and reorganization is impossible without their absolute and active support.

Besides, pensioners, in contrast to other categories of farm workers, do not get any immediate tangible advantages from reorganization.

During the information campaign targeted at this category of share holders it is therefore necessary to explain to them that benefits they used to get from the former collective farms, such as cultivation of individual vegetable gardens, supply of fire wood and repair of houses, will continue at least at the same level. These promises should be made only if there is hope that they can be kept, and that the Commission members are working in this direction.

If share holders wisely dispose of their shares, they themselves, their heirs and relatives can earn considerable long- and medium term profits.

3.3.2.c. Model Schedule of the Information Campaign

Table 10 presents a model schedule of information and education activities in support of reorganization. The schedule is compiled considering that reorganization should be preferably carried out in the non-growing season, in the short period between late autumn and early spring. This schedule can be adjusted for each farm with consideration for their specific circumstances and the date when reorganization starts.

3.3.2.d. Duties of the Information Campaign Coordinator

The information campaign coordinator is responsible for:

- establishing an information center with a desk and a bulletin board in the central farm village. Basic information on reorganization activities, reorganization documents and materials of general interest can be placed on the bulletin board.
- placing bulletin boards in the central farm village, major populated areas and economic subdivisions. Updated information on reorganization developments can be placed on these boards;
- developing a work plan and weekly schedules in coordination with the Commission and experts;
- updating information on the bulletin boards in a timely and regular manner, and providing the population with information and educational materials;
- organizing individual discussions and educational workshops with owners of land and property shares, monitoring public opinion and determining and reporting to the managers on the most typical questions on reorganization;
- identifying potential leaders of new farms and involving them in the information campaign;
- informing the interested persons of such events as meetings, round-table discussions with experts and seminars;
- making proposals aimed at changing the dates, venue and status of the planned information meetings and organizing additional events (proposals can be aimed at amending meeting agendas, seminars themes, lists of invitees, etc.);
- evaluating the influence of mass media;
- coordinating all his/her activity with the Commission leaders.

All information used in the campaign should be agreed upon by the Commission.

It is prohibited to provide unverified information, make incompetent or ungrounded statements, or take part in arguments during meetings and individual discussions.

3.3.3. Information Campaign at the Raion and Oblast Levels

One of the key elements of an informational/educational effort in support of reorganization at the raion and oblast levels is **the close interaction between intra-**

farm commissions on reorganization and the Local Administration, federal and public organizations, and the media.

- The commissions on reorganization should contact the above structures with a request to provide technical advice and information on legislative acts necessary to prevent or resolve conflicts and disputes.
- The commissions on reorganization may propose that the Local Administration conduct informational seminars to thoroughly discuss reorganization problems and ways of resolving them.

Cooperation between Commissions, supported by the Local Administration and local media, significantly broadens the audience of the information campaign. Additionally, the openness in which work takes place decreases the probability of abuse during land and property distribution and helps form a positive public opinion towards reform.

Table 10

Activities	November			December				January				February				March			
	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4	1	2	3	4
Fulfil other assignments from the Commission chairman related to the information campaign.	←-----→																		
Establish contacts with local mass media.	←-----→																		
Cooperate with correspondents of the local and national mass media, assist them in collecting information about farm reorganization developments.				←-----→															
Participate in land and property distribution, pass information about dates and distribution procedures to all the share owners, prepare documents.												←-----→							
Inform land share owners of the date of issuance of certificates of land ownership.												←-----→							
Inform the population of the transfer of the social sphere services to the local municipality.								←-----→											

CHAPTER FOUR

PREPARATORY STAGE OF FARM REORGANIZATION

Contents:

- 4.1. Overview
 - 4.2. Implementation
 - 4.2.1. Organization and Conduct of the General Meeting
 - 4.2.2. The Farm Reorganization Commission
 - 4.2.3. Addressing Social Problems of Reorganizing Enterprises
 - 4.2.4. List of Persons Entitled to Land and Property Shares
 - 4.2.5. Farm Land and Property Inventories
 - 4.2.6. Recalculating of the Property Share Fund and the Value of Property Shares
 - 4.2.7. Documents on Land and Property Shares
 - 4.3. Rights and Opportunities of Land and Property Share Owners
 - 4.3.1. Methods for One's Land Share Disposal
 - 4.3.2. Methods for One's Property Share Disposal
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4.1. Overview of the Preparatory Stage

4.1.1. Introduction

The **main components** of the preparatory stage include:

- ground work aimed at initiating reorganization and providing the necessary conditions for its implementation in compliance with legislation of the Russian Federation;
- documenting the rights of the farm's members to land and property share ownership;
- carrying out preliminary activities to prepare for land and property distribution.

The **legal basis** for this stage of farm reorganization is legislation that regulates procedures for planning and conducting the general meeting of the workers of the reorganizing farm; procedure for electing the Farm Reorganization Commission; the Commission's composition and powers; the transfer of the social sphere assets and the process of documenting rights of farm members to land and property shares.

The **decision to reorganize** is taken by the highest management bodies of agricultural enterprises in compliance with their founding documents. Usually it is the **General Meeting** of the members of the enterprise that decides whether to initiate reorganization.

To implement the reorganization of an agricultural enterprise, an **Intra-Farm Commission on Land Privatization and Farm Reorganization** must be formed. The composition of the Commission is approved by the highest management body of the agricultural enterprise.

4.1.2. Initial steps in farm reorganization

It is preferable to begin an **information campaign** oriented toward farm members and farm pensioners before the General Meeting and to explain to them the goals of reorganization and rights of land and property share owners. The information campaign should be conducted throughout the preparatory stage and address a number of issues related to this stage and to the issuance of land and property titles.

The **initial steps** of farm reorganization include:

- the organization and conduct of a **General Meeting** (refer to 4.2.1);
- the establishment of an Intra-Farm **Commission on Land Privatization and Farm Reorganization** (refer to 4.2.2. and Appendix 1).

If a decision in favor of farm reorganization is adopted, the farm management must notify the corresponding trade union committee and the local manpower bureau of **possible general layoffs** within 3 months from the date the decision was adopted.

Workers are notified in person of possible layoffs and must sign a confirmation that they have been notified within 2 months from the date the decision on reorganization was adopted. For this purpose a special *prikaz* is adopted (see Appendix 2). The farm management must then send the *prikaz* to the local manpower bureau with data on each worker (including profession, specialization, qualification, and salary).

Farms with accounts payable and other forms of debts must notify their creditors of the impending reorganization (see Appendix 3).

4.1.3. Activities of the Commission During the Preparatory Stage

During the preparatory stage the Commission is responsible for:

- *developing the reorganization plan;*
- *addressing social issues;*
- *conducting an inventory of land and property;*
- *organizing the issuance of land and property share titles.*

4.1.3.a. Developing the Reorganization Plan

A reorganization plan should enumerate the activities necessary to carry out the main stages of reorganization, and specify the time by which these activities must be completed (Appendix 4).

- The time allotted to each of the activities should be determined while keeping the specific features of the farm in mind and can vary substantially depending on whether land and property titles have been issued.
- A member of the Commission should be responsible for each activity in the plan.

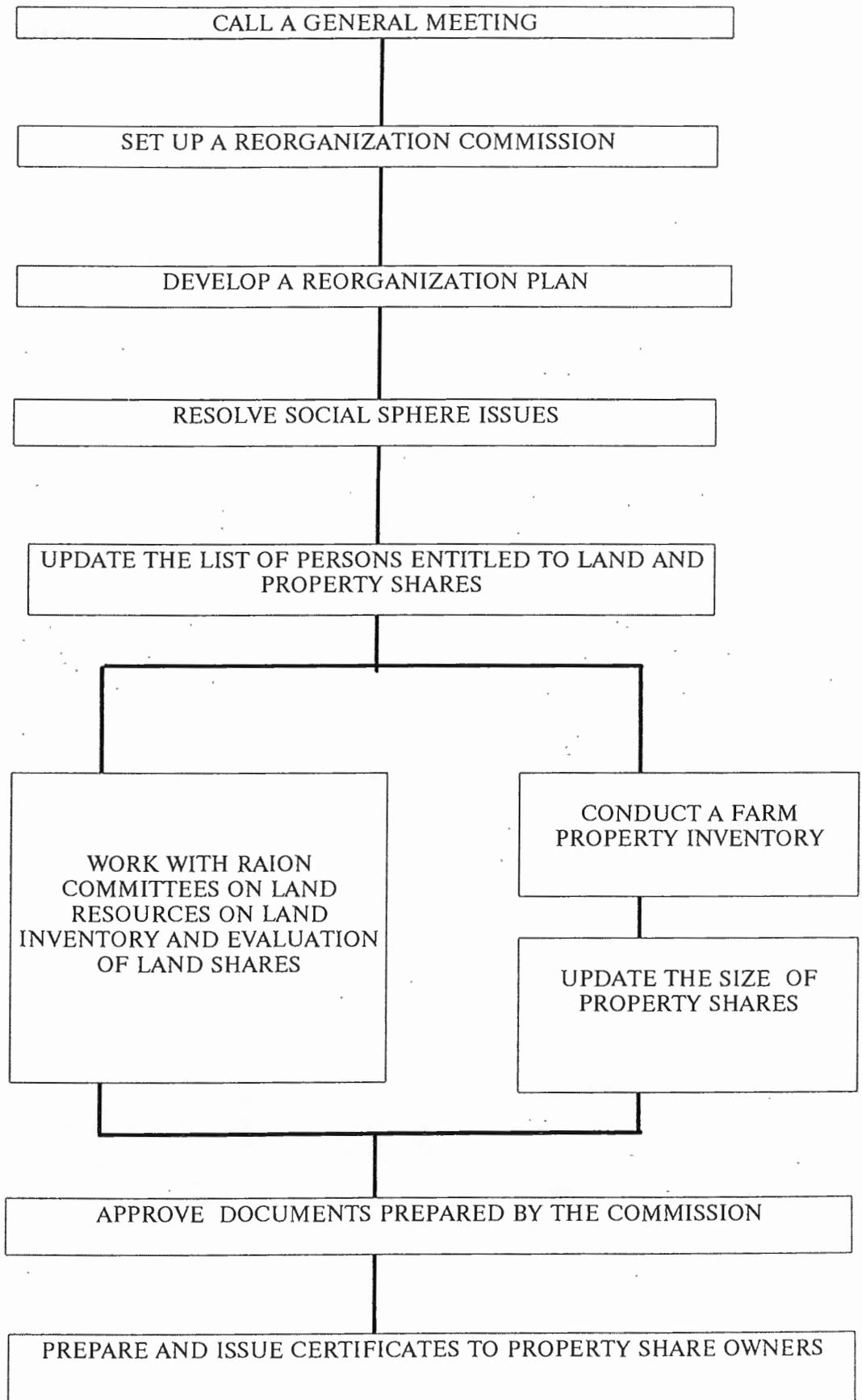
4.1.3.b. Addressing Social Issues

The Commission is responsible for addressing the following social issues:

- Partial or complete transfer of social sphere facilities and infrastructure that are on the balance sheet of the enterprise to the municipality (to the balance sheet of the Local Administration or other organizations).
- Privatization or transfer to the municipality of housing belonging to the enterprise.
- Problems of the socially vulnerable rural population residing on the territory of the reorganizing enterprise.

The Commission should work out specific proposals pertaining to the social sphere infrastructure and options for the privatization of housing.

FARM REORGANIZATION PREPARATORY STAGE



The above social issues should be given consideration as soon as possible, because decisions regarding social sphere objects will influence both the size of the property share fund and the size of property shares. Unresolved or untimely resolved social problems may become a major impediment to land and property distribution during the process of new enterprise creation and to the whole process of reorganization. Without proper planning, a new enterprise could find itself bearing the full burden of maintaining the social sphere infrastructure while lacking the necessary funds to maintain them.

Options for solving social issues within the framework of the current legislation are described in 4.2.3.

4.1.3.c. Conducting an inventory of land and property of the farm

- The **Development of a plan of action for inventory of farm land**, including that of agricultural land transferred to farm members. Upon request of the Commission, the land inventory may be carried out by the Raion Committee on Land Resources and Land Survey (refer to 4.2.5). If necessary, the Committee on Land Resources and Land Survey may also carry out a land survey and determine the area of plots for social sphere facilities and infrastructure.
- **Inventory of the farm's property** (refer to 4.2.5.) The property inventory should be conducted thoroughly, since on many farms serious changes have taken place after the initial calculation of the property share size. Results of the inventory should reflect the availability of the property item and its actual condition. Experience shows that an inventory conducted in a careless manner may result in overvaluation of property shares and subsequent conflicts during property distribution.

The results of the land and property inventory are the basis for the calculation of land and property share sizes that are used for land and property distribution among the newly created enterprises and individual owners.

4.1.3.d. Preparation for Issuance of Land and Property Share Titles

The Commission should ensure that all persons entitled to land and property shares be issued appropriate titles.

This work is to be carried out on farms that have not yet issued land and property share titles. In many regions, land share titles have been issued by the Raion Committees on Land Resources and Land Survey. However, on most farms land and property share titles have not been issued or have been issued with procedural violations. Preparatory work on the issuance of land and property share titles includes the following steps:

- **Development or updating** of lists of persons entitled to land and property shares (refer to 4.2.4.);
- **Determination or revision** of the size of land and property shares.

Farms that have calculated and approved the size of land and property shares in compliance with Resolution No.708 of the Government of the Russian Federation (September 4, 1992), but have not issued certificates, may issue these certificates on the basis of the previous calculation. The calculation and approval of land and property share sizes have been completed in most regions.

A farm may decide to revise the size of property shares in order to avoid conflicts. If mistakes have been made during the previous reorganization, or if the property of the farm has changed considerably, it is advisable to revise the size of property shares. The Intra-Farm Commission shall verify the results of the calculation, update them, and index them with regard to inflation (refer to 4.2.6.).

- **Preparation of property share certificates** (refer to 4.2.7.);
- **Groundwork with Raion Committees on Land Resources and Land Survey for the preparation of certificates of land share titles** (refer to 4.2.7.).

The documents resulting from the work of the Intra-Farm Commission during the preparatory stage must be **approved** by the highest management body of the reorganizing enterprise, which is usually a General Meeting of the members (refer to 4.2.7.).

The preparatory stage terminates upon the issuance of certificates of land and property share titles to all those entitled to them.

4.2. Implementation of the Preparatory Stage

4.2.1. Organization and Conduct of the General Meeting

The **General Meeting** represents the highest management body of most legal/organizational forms and has the authority to make decisions concerning reorganization of the farm. The first General Meeting on reorganization should be called and carried out in accordance with the foundation documents of each agricultural enterprise that is to be reorganized. The procedures for the preparation and organization of General Meetings vary according to the legal form of the enterprise.

During 1991-92 collective and state farms were reorganized into the following legal forms in compliance with the Law of the RSFSR of December 25, 1990 "On Enterprises and Entrepreneurial Activity":

- full or mixed partnerships;
- limited liability partnerships;
- open or closed joint stock societies;
- cooperatives.

The above legal forms exist today, therefore reorganization procedures should be based on the founding documents of these organizations.

4.2.1.a. The General Meeting for Joint Stock Companies

Regulation 601 *on Joint Stock Companies (Point 91)* provides that the highest administrative body of a joint stock company is the General Meeting of its shareholders, which has the exclusive authority to make a decision on reorganization.

Written Notice of a General Shareholders' Meeting

In the case of joint stock companies, written notice of a general shareholders' meeting must be given not less than thirty (30) days prior to the meeting, and sent to all shareholders at their registered addresses as shown in the official registration book of the company. The company charter may contain alternative provisions that permit notice of General Meetings and the agenda for the meeting to be published in a specific newspaper.

Authority for Holding a General Meeting

The meeting is duly authorized to take place if the holders of **no less than one half of the voting stock** or their legal representatives are present. If a quorum is not present, then the meeting can be rescheduled, and will be considered duly authorized to act if any number of voting shares are present (point 101).

Decision by Vote

All matters at the meeting are decided by vote according to a system of one vote per one common share. To take a vote, the Secretary of the Board of Directors of the Company prepares ballots showing the name of each shareholder, the number of votes he/she owns, and the issues on the ballot. If the shareholder is not present at the meeting, he/she must present to the Board of Directors a power-of-attorney for his legal representative to vote at the meeting. If such power-of-attorney is not presented, the shareholder is not entitled to participate in the vote.

The decision to reorganize a company requires an affirmative vote by a three-quarters (3/4ths) of those present at the shareholders' meeting. On all other questions, a simple majority vote of those shareholders present at the meeting is required (point 105). In the event of a tied vote, the chairman of the meeting casts the deciding vote (point 104).

4.2.1.b. General Meeting for other Organizational Forms

Other legal/organizational forms, created and operating in accordance with the law *On Enterprises and Entrepreneurial Activity*, do not contain such rigid requirements for conducting General Meetings. Therefore, the charters and founding documents of such other organizations, as a rule, do not contain instructions about the length of time and procedure for notifying the members of calling a General Meeting. An analysis of various farm documents shows that 3-4 days advance posted notice containing the agenda, time and place of the meeting is sufficient.

4.2.1.c. Preliminary Work on the Social Sphere

At the General Meeting, it is necessary to adopt a resolution on **the transfer of the social sphere assets** to the Local Administration (unless the assets were already transferred during the privatization phase of the farm). The preparatory work required for the discussion of this resolution at the General Meeting requires 15-20 days to complete as it is necessary to make the list of assets to be transferred and approve the list at the meeting.

4.2.1.d. Agenda of the General Meeting

The Agenda of the General Meeting must contain those matters pertaining to the economic condition of the farm and the proposed solutions to the existing circumstances. Prior to the meeting, the farm management should thoroughly discuss all issues regarding the reorganization of the farm. Any foreseen problems should be included on the agenda. Due to these earlier discussions, all participants at the meeting should be well informed of these issues and will be prepared to make a decision on reorganization.

For successful decisions on questions pertaining to reorganization, every farm worker has to know his rights as an owner of a land and property share in order to glean a proper perspective of what reorganization means, not only for the farm, but for the individual farmer.

Recommended Agenda:

- Analysis of the economic condition of the farm
- Reorganization of the farm -- methods for resolving the current crisis situation
- Transfer of social sphere assets
- Selection of the Intra-Farm Reorganization Commission
- Ratification of the Terms of Reference of the Farm Reorganization Commission

4.2.1.e. Making a Decision on Reorganization

The **decision on reorganization** is taken in accordance with the procedures defined in the founding documents of the reorganizing farm. For example, a joint stock society requires a three-quarters majority vote of those present at the meeting. For other legal forms, a quorum is necessary according to the founding documents.

4.2.2. The Farm Reorganization Commission

If the decision to reorganize the farm is approved at the General Meeting, it is necessary to select the members of the **Intra-Farm Reorganization Commission** or reauthorize the commission created during the privatization of the farm.

4.2.2.a. Composition of the Reorganization Commission

The Commission is usually composed of 5 to 7 members, including the general manager and chief accountant of the reorganizing farm, with **full voting authority**. All members of the Commission must be selected by the participants at the General Meeting based on the provisions of the charter or other founding documents. **Advisory voting authority** may be exercised by members of the Commission who are representatives of the local government, the local Department of Agriculture, the Committee on Land Reforms and Land Resources, and the Property Committee.

4.2.2.b. Basic Duties of the Commission

The **authority** of the Reorganization Commission is explained in the recommendations approved by Resolution No. 96.

The basic duties of the Commission include:

- the conduct of the information campaign;
- the preparation of an inventory of farm land and property;
- verification of the list of persons that have the right to receive land and property shares;
- preparation of documents for distribution of land and property certificates;
- informing the farm's creditors about reorganization;
- preparation and implementation of land and property distribution;
- preparation of the divisional balance sheets and bills of sale (transfer documents);
- offering assistance to the newly organized legal entities with the preparation of their founding documents and charters as well as their registration.

A sample form of Terms of Reference for the Intra-Farm Reorganization Commission is presented in Appendix 1.

4.2.3. Addressing Social Problems of Reorganizing Enterprises

The social sphere includes the following facilities and service entities:

- Day care centers, schools and other educational institutions;
- Medical centers, out patient clinics, drug stores;
- Libraries, clubs, other cultural institutions;
- Trade, public catering;
- Housing, intra-farm roads, power, water and gas supply systems, telephone lines and other utilities;
- Water purification systems, public baths, laundries, sewage systems, wastes utilization systems and others.

4.2.3.a. Transfer of the Social Sphere

The *Resolution of the Government #86 of December 29, 1992*, established that the above social sphere facilities will be transferred to the Local Administration. The same Resolution gave the farms the right to sell or lease social sphere facilities (except for educational institutions).

The procedure for the transfer is established by the *Instruction of the Ministry of Agriculture and State Property Committee "On Procedures for Transferring, Selling and Leasing the Property of Collective and State Farms to Municipalities"*.

The *Resolution of the Government # 724 of July 17, 1995 "On the Transfer of Social Sphere Assets and Engineering Infrastructure"* is specially devoted to the issues of social sphere transfer.

Resolution No. 96 of the Government of the Russian Federation (February 1, 1995), confirms the powers of the Intra-Farm Commission to determine the social sphere services and infrastructure that should be transferred to the Local Administration. In addition, the Resolution stipulates that the Raion Administration will organize the acceptance of the objects transferred by the agricultural enterprises.

According to *Resolution No. 96*, the decision on the transfer shall be taken by the land and property share owners (according to the *1992 Instruction* this decision is made by the workers' collective).

In the interests of the workers' collective some assets utilized in the provision of social sphere facilities can be preserved on the balance sheets of reorganized enterprises.

The *Resolution of the Government # 724 (July 17, 1995)* specifies that "the transfer of social sphere assets and engineering infrastructure of agricultural organizations to municipalities is effected on a **voluntary basis**".

Municipalized social sphere facilities can be transferred **to unitary enterprises** and other organizations **on the basis of their economic jurisdiction or operative management** (refer to 5.3.2).

In some cases a social sphere facility can be better managed by a cooperative or a private enterprise, rather than by the municipality. This is especially true for repair shops, enterprises servicing private garden plots, retail stores and construction enterprises. The work of these enterprises can become even more effective if an association is set up to support them. The association can be formed by reorganized farms, industrial enterprises, other organizations, local administrations or government bodies.

4.2.3.b. Preparation for the Transfer of the Social Sphere

In compliance with Russian legislation the decision on the transfer (sale, lease) of social sphere assets and housing is taken by the highest management body of the reorganizing enterprise on a proposal of the Intra-Farm Reorganization Commission.

The decision of the highest management body shall be discussed with the Local Administration. In cases of disagreement, the decision on the transfer shall be taken by the Raion Administration.

Preparatory work on the transfer of social sphere facilities consists of the following activities:

- Making a list of assets to be transferred or sold, on the basis of an inventory. Once the list has been completed, the technical condition of the assets is evaluated and the residual cost is calculated;
- The Intra-Farm Commission considers the list of assets and prepares proposals regarding their use;
- The local Administration assumes outstanding debts resulting from loans obtained by the farm for the purchase or construction of assets for use in the provision of social facilities, the services of which are transferred free of charge to the Local Administration.

During the transfer process the Intra-Farm Commission is obligated to:

- determine the procedure for the free transfer of social sphere assets and facilities;
- appraise the facilities to be privatized;
- determine the procedure for the transfer of social and cultural facilities to the municipality or to another legal entity;
- assist in housing privatization in accordance with current legislation;
- ensure that social sphere facilities maintain their original functions.

4.2.3.c. Documentation Associated with the Transfer of the Social Sphere

The Intra-Farm Commission, together with the Local (Raion) Administration, **prepares documents on the transfer and acceptance of the social sphere facilities and infrastructure** that are transferred to the Local Administration.

The *Resolution of the Government # 724 (July 17, 1995)* recommends that social sphere assets should be transferred to municipalities **free of charge together with the documents necessary for their maintenance and without any special obligations to repair them.**

The social sphere assets should be transferred within the period of **one month** of the time when the decision to transfer them is taken by the workers' collective. The transfer is documented by the transfer and acceptance act. The act shall specify the names of the transferring and accepting parties, the description of the assets, their book cost and depreciation and special provisions regarding their maintenance.

The sale of social sphere assets is documented by the sale and purchase agreement. Educational institutions (schools, libraries, training centers etc.) are not subject to transfer.

For each leased asset a lease agreement is drawn up. The agreement shall specify the cost of property, the term of lease, lease payments, and liabilities of the parties regarding the repair of the property. It shall also stipulate the liabilities of the lessee to use the property in accordance with the provisions of the agreement, to return the property in the condition determined by the agreement, and other liabilities of the lessor and the lessee.

4.2.3.d. Local Administration Involvement

Successful transfer and further functioning of social sphere facilities is dependent upon participation of the **Local (oblast, raion, village) Administration** in this process.

The Local Administration adopts the relevant legislation regulating the process of transfer, which:

- determines the organizations that will accept the social sphere facilities (roads, etc.);
- determines the date of submission of transfer and acceptance acts and calculates maintenance costs for the administration.;
- specifies the sources of financing of the facilities transferred to the administration. It is recommended to seek alternative sources of financing, such as lotteries, independent social and credit funds, issuance of bonds, etc.;
- determines the procedure for setting up municipal service enterprises (staff schedule, financial plan, input supply, etc.);
- specifies measures of technical inventory of the transferred assets;
- determines the bodies that will monitor the process of transfer.

To ensure the proper functioning of social sphere facilities, it is necessary that each facility and its attendant equipment be in good operating condition. Therefore, it is advisable that the Raion Administration adopt a *decision* regulating quality standards for assets to be transferred. In making the decision the Raion Administration should determine the procedure for repairing and improving assets in situations when the reorganizing enterprise is unable to do so (whether due to a shortage of cash, lack of specialists, materials, etc.).

The administration concludes agreements with agricultural enterprises for financing and maintaining some of the facilities that remain in common use.

The administration supports those agricultural enterprises that have retained some of the social sphere facilities by granting credits, soft loans, subsidies, deferred tax payments and other incentives.

The Resolution of the Government # 724 (July 17, 1995) defines the mechanism for social sphere financing. According to this Resolution, the Ministry of Finance of the RF, while drafting the federal budget and determining the ratio of the federal budget to the budgets of the subjects of the RF, shall take into consideration maintenance costs of social assets and engineering infrastructure which are transferred to municipalities on the basis of transfer and acceptance acts with necessary calculations attached and having taken into account revenues from housing and cultural sphere assets maintenance tax. **This tax is levied on agricultural organizations during the transfer of social sphere assets and engineering infrastructure to municipalities.** According to the current legislation the tax is 1.5% of the value of products (services, work) sold.

4.2.3.e. Housing Transfer

Many agricultural enterprises have retained the responsibility for housing. This requires large financial resources for maintenance. For this reason, new, reorganized enterprises are interested in transferring their housing obligations.

If the reorganizing enterprise formerly belonged to the state (sovkhoz, goskhoz), the housing is transferred to the enterprise workers in compliance with federal and oblast acts on state property privatization.

Collective enterprises of various forms transfer housing according to one of the options described below:

- Residential properties are left on the balance sheet of the reorganizing farm, are not taken into consideration when the property share fund is calculated, and are privatized in accordance with housing legislation;
- If a tenant refuses to privatize his or her house, the house is transferred to the municipal authorities as a social sphere asset. From this point onward privatization is carried out by the Local Administration.

During the process of privatization, sale, or incorporation of housing, technical certificates issued by the Bureau of Technical Inventory must be used. If problems arise during the process of inventory, it is possible to apply to the BTI with a request to pay by installments and not to be subject to commercial tariffs for the issuance of the certificates. This request can be supported by the Local Administration at the Raion or Municipality level. Another option is to make an advance payment for the certificates and make the final payment after the work is completed.

4.2.3.f. Protection of Socially Vulnerable Groups

Reorganization will not be successful if during the process the level of social protection of workers and land and property share owners (primarily pensioners, large families, disabled persons) decreases considerably. The following steps are recommended in order to protect these groups:

- During and after the process of reorganization, free services and services at reduced prices should still be rendered to different categories of workers. As this is very difficult to do during the transitional period, the enterprise should cooperate with other socially-oriented enterprises and organizations functioning on the territory of the reorganizing agricultural enterprise (municipal, unitary enterprises, service and consumer cooperatives).
- Non-government organizations (charity foundations, societies, etc.) should continue to support socially vulnerable groups of the rural population who reside on the territory of the reorganizing enterprise. This support should be carried out with the cooperation of the Local Administration that has direct responsibility.
- Special attention should be paid to ensure that the rights of war and labor veterans are protected as these veterans have the same rights as other members of the enterprise. They are entitled to improvement of living conditions, daily services and use of cultural facilities affected by the privatization of the enterprise.
- The Intra-Farm Reorganization Commission and ultimately the leaders of new enterprises should agree on a system for making payments or rendering assistance to private plot farming and providing services to pensioners and other owners who have leased their land and property shares to new enterprises.

4.2.4. List of Persons Entitled to Land and Property Shares

At the initial stage of farm reorganization the Intra-Farm Reorganization Commission prepares and verifies the list of persons entitled to land and property shares in accordance with Russian Legislation.

Preparation of lists and calculation of land and property shares has already been carried out in many farms during the mass reorganization campaign of 1992 - 1993. However, during this time many mistakes and violations of the law took place in relation to the preparation of lists, specifically with respect to pensioners and those potential owners who appeared after the lists were compiled. New members who have recently joined farms also want to participate in land and property distribution.

All this necessitates verification and updating of lists in accordance with current legislation prior to the actual land and property distribution.

4.2.4.a. Guidelines on the Formation of Entitlement Lists for Land and Property Shares

Categories of people entitled to land and property shares were determined by the Government of the Russian Federation Resolution No 86 of December 29, 1992, and expanded by Resolution No 708 of September 4, 1992.

Criteria according to which persons are considered to be entitled to land and property shares in the event of farm reorganization were further specified by

Resolution No 96 of February 1, 1995. Resolution No. 96 clarified the rights of the person within an agricultural commercial organization.

The territory of an agricultural commercial organization (enterprise) is the land within boundaries determined by land assignment documents, issued prior to approval of new land redistribution drafts in connection with farm reorganization.

The following categories of people have **the right to become land share holders** according to Resolution No. 96:

- **Workers of agricultural commercial enterprises**, including those dismissed because of staff reductions after January 1, 1992 up to the moment when rights to land shares arose (this moment is considered to be the date the Raion Administration accepts the decision to transfer land to the joint ownership of the enterprise). Part-time, seasonal workers, and those who work on the basis of independent services agreements are not included;
- **Pensioners retired from the farm** who continue to live on its territory, including those who receive death benefits, disability pensions, and other types of pensions. Pensioners residing in houses and living on premises owned by the enterprise at the moment land share rights arose, even if these houses are situated beyond its boundaries, are considered residents of the agricultural enterprise;
- **Pensioners who live on the territory** transferred to the agricultural profit-oriented organization in the process of reorganization but who retired from the farm to which this territory formerly belonged;
- **Workers of the social sphere facilities** (medical, cultural, educational and other institutions) situated on the territory of that enterprise;
- **Persons temporarily absent** from the farm but having the right to return to that enterprise (servicemen, scholarship holders, workers referred to training courses, women on maternity leave). The above persons can either dispose of the land share or send a power of attorney to their proxies who will dispose of the land share in accordance with the absent person's instructions. If the worker can neither come to the farm in person nor send a power of attorney, the land share he is entitled to shall become part of unclaimed land shares, and this person shall retain the right to claim his land share in case he returns to work on the farm (within the time limits established by Russian legislation);
- **Heirs** to persons who had the right to a land share but who died before the issuance of certificates -- if they apply for them within the limitations established by Russian legislation. Under the new Civil Code of the RF (Art. 196) the general period of limitation shall be established as three years.

Persons Having a Right to a Property Share

In most cases, the categories of people who have the right to land shares also have the **right to property shares**. The primary exception to this right relates to workers of social sphere facilities located on the territory of the enterprise. Such workers can be included in the list of property share holders only upon the decision of the General Meeting of the members of the agricultural enterprise.

The General Meeting is authorized to include persons who do not fall under either of the above enumerated categories in the list of property owners, in particular, those

persons who worked on the farm for a long time or voluntarily discontinued their employment. However, the General Meeting is authorized to choose other criteria at its discretion.

(By analogy with the State Program of Privatization of State and Municipal Enterprises, approved by the Decree of the President of the RF of December 24, 1993, p. 5.3.1. the length of service necessary for including a former worker on the list may be 10 years for men and 7 years and 6 months for women.)

It should be stressed that the General Meeting may add persons to the list but cannot exclude persons whose rights are specified by law.

Resolution No. 96 clearly states that citizens are limited to obtaining land shares in one commercial organization only, but have the right to obtain property shares in several commercial agricultural organizations.

This difference reflects the fact that a property share in each enterprise depends upon an individual's length of service, in contrast to land shares, which are equal among all the farm members irrespective of labor contribution.

4.2.4.b. Procedure for List Preparation

The preparation of lists of individuals entitled to land and property shares is carried out by the Intra-Farm Reorganization Commission and consists of the following steps:

Making New Lists or Updating Existing Lists

Officers of the enterprise's personnel department are usually invited to participate in this work. Passport data shall be incorporated in the list of land share holders, because later the raion committee on land resources and land survey will need this data for the issuance of land share titles. It is advisable to include individual length of service at the given enterprise in the list of property share owners.

Announcing the Preliminary Lists of Land and Property Owners

This work is aimed at creating conditions for everyone to become acquainted with the lists and to determine the possible claims before issuance of titles and farm distribution. Lists should be posted in farm information centers and at heavily frequented public places. The information should carry the deadline prior to which claims to land and property shares can be brought. It should also specify the place where claims shall be brought, and the name, address, phone number and work hours of the member of the reorganization commission responsible for claims.

Other options for informing the public can be used -- among them, for instance, an advertisement in the local newspaper with information on farm reorganization, and the preliminary list of land and property owners.

Settlement of Claims

Persons who have not been included on the preliminary lists, but who believe that they have the right to be included, should address their claims to the reorganization commission. A commission member should be made responsible for the collection and registration of these claims. These claims shall be promptly considered by the commission with regard to the current legislation. Lawyers shall be invited to participate in the consideration of these issues if disputes arise. Persons whose claims are found to be legally grounded should be included in the lists.

Approval of Lists

Lists must be approved by the highest body of an agricultural organization. Usually the approval takes place at the farm General Meeting at which the whole set of documents prepared by the reorganization commission for the issuance of certificates is presented.

Transfer of Lists to Raion Administration

Lists must be transferred to the Raion Administration together with other documents necessary for the issuance of certificates.

On the basis of the submitted documents the Raion Administration makes a decision on the issuance of certificates of land and property titles issued by the committee on land resources and land survey. Upon the issuance of certificates, claims on land and property shares are settled by court.

4.2.5. Farm Land and Property Inventories

4.2.5.a. Land Inventory and Land Share Calculation

Upon the request of the reorganization committee, the raion committee on land resources and land survey conducts a land inventory.

The raion land committee prepares a **land survey** showing boundaries of the enterprise and agricultural lands transferred to the common property of the members of agricultural enterprise. The land survey also shows crop rotation and evaluation of fields and plots in hectare-points based on the quality of land. The map must show the boundaries of land with restricted use which is encumbered by the rights of other persons.

The results of the inventory of agricultural lands transferred to the common property of the members of an agricultural enterprise must be reflected in a **Land Inventory Act** (Appendix 5).

The Inventory Act serves as a basis for **the calculation of land shares in hectares and hectare-points**.

The size of land share in hectares must be calculated by dividing the total size of agricultural land transferred to the common property of an agricultural enterprise by

the total number of persons entitled to land shares in that enterprise. The total size of agricultural land must be determined on the basis of inventory, or in the absence of inventory - on the basis of the State Act (certificate).

The size of a land share in hectare-points is calculated by dividing the total amount of hectare-points of all the agricultural land transferred to the common property of an agricultural enterprise by the total number of persons entitled to land shares in that enterprise.

The size of a land share should not exceed the established rayon norm of free land transfer, with the rayon average land quality index taken into account.

In the event the size of the land share calculated for the farm exceeds the above norm, the land share size is reduced to the rayon norm, with farm land quality taken into account.

In the event the size of the land share is smaller than the rayon norm, the size of the land share is established according to the calculations rather than increased to equal the rayon norm.

The size of the land share of the farm should be approved by the rayon land committee.

In accordance with Resolution # 96 in the event the land shares have been calculated and approved in the established manner in accordance with Resolution # 708 (September 4, 1992), they should not be re-calculated and the certificates should be issued on the basis of the previous calculation.

The Intra-Farm Commission at this stage should take the following steps:

- submit a request to the rayon land committee to conduct a land survey (or update the existing maps), assist the rayon land committee in doing this work;
- compare the maps compiled by the rayon land committee and inventory statement with the actual situation;
- request that maps be amended if there are discrepancies in the maps;
- approve the land inventory statement.

Land inventory statement for the lands in common ownership and calculation of land share size are approved by the highest management body of the enterprise together with the package of documents necessary for the issuance of certificates of land and property share ownership.

4.2.5.b. Property Inventory

Property shares were calculated on most farms during the 1992-1993 reorganization campaign. But the degree of reliability and trustworthiness of the initial calculation of property shares varies greatly from farm to farm. On some farms, the shares were calculated conditionally and on other farms were not calculated at all. Substantial changes have taken place in the property status during the period of time since the initial calculation of property shares -- in many cases the property has been destroyed, fallen into disrepair, or has been irretrievably lost.

In this connection, it is advisable, even on the farms where shares have been calculated and approved according to the established procedure, that the

reorganization committee conduct a property inventory. This careful review should be of all the financial obligations; farm management may have to make a decision on whether to conduct a special inventory involving a revision of property shares taking into account structural, inflationary and other changes in the property cost. Failure to draw up such an inventory can later lead to serious consequences during property distribution (irrespective of the method of distribution chosen).

Possible consequences of conducting a property inventory without due care:

Disputes over non-existent or destroyed pieces of property which are still on the balance sheets of enterprises and have a positive book cost.

Overstatement of the value of the property share fund and of property shares which may lead to conflicts. As a result of overstatement, some shareholders might be tempted to get the non-existent sums in cash. On the other hand, for those who would like to sell, lease or otherwise dispose of his property share its high value will create many problems connected with taxation of revenues.

Overstatement of the value of some assets may become an impediment to the search for bidders on these assets, and, on the other hand, the demand for other assets will become artificially high as their value will be underestimated.

Conducting a property inventory and re-calculation of property shares is labor-intensive and time-consuming. Depending on the level of readiness of cadres and the size of the farm the inventory could take several days or even weeks. Even on the farms where property accounting is well documented, drawing up properties often takes two weeks.

The Land Privatization and Farm Reorganization Commission is responsible for farm property inventories and the calculation of property shares. The Commission can, at its discretion, set up an ad hoc inventory sub-commission to carry out all the technical work and to prepare a set of documents necessary for the updating of the property share fund and the final determination of property share values.

4.2.5.c. Property Inventory Procedures

A property inventory is an inventory of all assets and liabilities which determines the availability of assets at a given point in time and their sources, as well as all the actually incurred expenses. The procedure consists of several steps.

Step One: At first the accounting office of the reorganizing farm submits to the Intra-Farm Reorganization Commission all accounting data pertaining to:

- **Fixed production assets on the farm balance sheet (inventory card on fixed assets or inventory books).** Fixed assets should be grouped by categories, each item should have an inventory number, detailing year of production, construction or acquisition and a book cost. To facilitate the process of making up an inventory and the follow up activity, such as lot formation, it is advisable to include in this category of assets cattle barns specifying the number and cost of livestock in each barn, to include warehouses without their content, and administration buildings - together with equipment and furniture inside. Capital investments (unfinished construction, installation work) are included into a separate list.

- **Fixed non-production assets - social sphere facilities and engineering infrastructure (inventory cards data).** Preparation of a separate list of fixed non-production assets is very important in the event that social sphere facilities have not been transferred to the Raion Administration and the transfer is still pending.
- **Current assets on the balance sheet of the enterprise.** Current assets include:
 - Fodder, seeds, fuel, construction materials, fertilizers, pesticides, etc.;
 - Work-in progress at the cattle farms and shops;
 - The value of agricultural produce and goods;
 - Agricultural work-in-progress including the cost of plowing, sowing of winter crops, perennial plants, etc. Each land site should be included in the list with the description and value of agricultural work-in progress;
 - Assets of little value and assets that quickly wear off.

Drawing up an inventory of current assets should be based on accounting data, for example, of lists of stock in hand.

- **Debtors and Creditors.** To take an inventory of settlements with Debtors and Creditors requires a reconciliation of entries made by the accounting offices of the reorganizing farms with the entries made by the corresponding debtors' and creditors' accounting offices. Discrepancies between the entries should be settled through negotiations or through court proceedings if the necessity arises (providing all the accompanying documents are duly prepared and available for such court proceedings).

Step Two: After the receipt of all the necessary information from the accounting office the Commission makes up a farm inventory, comparing available fixed and current assets with the book data (inventory cards, inventory lists, lists of stock in hand, etc.).

- The **Inventory Statement of Fixed and Current Assets** produced as a result of this process shall be compared with the initial data on the available property. The Reorganization Commission will prepare certificates of withdrawal from the accounts of all assets that are on the books but are not available in reality or are not fit for use and also include additional assets discovered by the commission but not previously entered on the balance sheet.
- The **initial balance sheet** submitted to the Commission should state the value of fixed assets in accordance with the latest re-appraisal of fixed assets at residual replacement cost. In reality this re-appraisal only distorts the real picture: old and dilapidated equipment sometimes costs more than

new. The Reorganization Commission has wide powers. For instance, it is empowered to correct the value of farm assets if, in its opinion, the values shown in accounting books (including results of reappraisal) do not reflect the real situation.

Step Three: The final stage of taking an inventory involves the preparation of Fixed and Current Asset Schedules in a format laid down by the Inventory Act.

The Schedules must be signed by all the members of the inventorization commission. Fixed Assets Inventory Act specifies

- fixed assets subject to distribution;
- assets subject to withdrawal from the accounting books;
- social sphere facilities and infrastructure to be transferred to the Local Administration in the event the transfer has not been implemented prior to reorganization.

From these schedules, the Commission updates the balance sheet of the reorganizing farm. Experience shows that on some farms where property share funds and property shares were previously calculated, balance sheets updated as a result of taking an inventory are often submitted to the Reorganization Commission both with 1992 figures and with figures as of January 1, 1995 with regard to the latest official reappraisal of fixed assets.

The following documents must be finally submitted to the Reorganization Commission for approval (in accordance with the Inventory Act):

- Fixed Assets Inventory Schedule by category of assets;
- Current Assets Inventory Schedule;
- A Balance sheet of the reorganizing enterprise in accordance with regard to the most recent inventory.

Sample documents for inventory implementation are given in Appendices 6,7.

4.2.6. Recalculating the Property Share Fund and Value of Property Shares

The Property share fund and property shares must be updated on the basis of the balance sheet of the reorganizing agricultural enterprise corrected according to the latest inventory.

The procedures for recalculating property shares differ depending on:

- whether property shares were calculated and approved at an earlier stage of reorganization;

- the procedure chosen by the Reorganization Commission for the reappraisal of property shares.

4.2.6.a. Compensating for Inflation

If the property share fund and property shares have already been calculated, it may be necessary to update the value of the property in accordance with the inflationary changes that have occurred since 1992. In this case, the following measures may be taken:

- The enterprise may exercise the right to update the value of property shares using an inflationary index (for this purpose an index showing minimal wage changes can be applied). One drawback of this method is that changes in property value caused by loss or depreciation are not taken into consideration;
- A more reasonable approach is to update the property share fund on the basis of a specially taken inventory. In this case the value of the property share fund can be calculated using a quotient which is a ratio of the property share fund value to its value calculated in 1992. Previously calculated property shares shall be multiplied by the quotient;
- Once a property share fund is corrected by taking an inventory, and new quotients are used for the calculation of property shares, the updating of property shares can take place. Experience shows that this approach avoids many economic problems and disputes as well as social conflicts during the actual property distribution. By taking this approach the available property and the list of claimants are updated.

In situations where property shares were not calculated or were calculated conditionally, the original procedure for the calculation of property share fund and property shares, approved by the Resolution of the Government of the RF No. 96 of February 1, 1995 and Recommendations of the Ministry of Agriculture of January 14, 1992 must be applied.

4.2.6.b. Property Share Fund and Calculation

The property share fund (PF) - is the value of part of the reorganizing farm's property which is subject to distribution. The property share fund is the basis for calculating property shares.

Upon the decision of the Reorganization Commission, service and support facilities can be excluded from the property share fund to make up an Indivisible Fund.

Independent enterprises can be set up on the basis of the Indivisible Fund. The Indivisible Fund can be transferred to one of the newly created organizations on terms, stipulated by the Agreement on Joint Activity of the share holders. The share of each agricultural producer is preserved in the charter capital of these enterprises. This share entitles producers to use services of the new enterprises on a cooperative basis.

The Property Share Fund Consists of:

(Assets)

- Fixed assets value (or residual cost thereof);
- Current assets value;
- Monetary assets and securities.

(Liabilities)

- Value of social sphere facilities transferred to the Local Administration, if this transfer has not been completed;
- All debts;
- Value of property written off (not reflected in value of fixed assets above).

Calculation of the property share fund can be found in Appendix 8.

4.2.6.c. Property Share Calculation

Before calculating property shares a proportion of the property share fund is set aside (reserve fund) as a provision against potential claims, re-appraisals and allocations of shares to workers erroneously excluded from the list of property owners. As a rule, the reorganization commission allocates 2 to 3 percent of the property share fund to the Reserve Fund.

A property share is a share of each member of an agricultural enterprise in the value of the property share fund.

The size of the property share is determined by:

- the value of the property share fund of the agricultural organization subject to distribution (minus the volume of Reserve Fund);
- labor input of each member of the agricultural enterprise into the creation of this property share fund;
- number of members of the agricultural enterprise entitled to property shares.

The labor input is calculated on the basis of:

- length of service in the given enterprise;
- average annual wage or qualification quotient of the worker;
- other indicators.

The indicators used for the determination of labor input shall be approved by the General Meeting of owners and shall be the same for all persons entitled to property shares.

Labor input calculation

Labor input is calculated in **year-rubles**. There are **two main methods** for the calculation of labor input.

Method one:

The annual average wage of each person during a period of not less than 5 years (must be 5 previous years) is multiplied by the total number of years worked on the farm. For pensioners the 5 year period is the same as that used for the calculation of pension entitlements.

Annual payments are indexed. The index is a ratio of the average wage of the previous year to the average wage of the current year. This index is multiplied by the sum of the total annual wage of the worker in the current year. Annual wages of pensioners are calculated the same way.

Method two:

Qualification quotients of the workers are determined by dividing the individual's tariff wage level by the tariff wage of the worker of the main profession, taken as a unit. The length of service on the farm is multiplied by the qualification quotient.

Property Share Calculation

The method of calculating property shares shall be approved by the farm General Meeting. As a rule, the property share of each worker (in year-rubles) is calculated as follows:

- the sum of labor contributions of all the farm members is calculated (S);
- the value of property share fund (PF) liable for distribution is divided by the total sum of year-rubles. This is the quotient (Q) for the calculation of property shares ($Q = PF : S$);
- the property share (PS) of each member is calculated in share rubles. The labor contribution of each member (LC) in share rubles is multiplied by the quotient ($PS = LC \times Q$).

The sum of all property shares is equal to the value of property share fund allocated for distribution. Examples of property share calculation can be found in Appendices 8, 9).

As a result of updating the property share fund and property shares the Intra-Farm Reorganization Commission must prepare the following documents:

- | |
|---|
| <ul style="list-style-type: none">• Property Share Fund Calculation Act and• Property Share Calculation Act. |
|---|

4.2.7. Documents on Land and Property Shares

4.2.7.a. Documents Needed for Issuance of Certificates

Upon the completion of the preparatory stage the Intra-Farm Reorganization Commission prepares documents (materials) pertaining to the preparation and issuance of land and property share certificates.

The documents must be approved by the farm's highest management body (as a rule by the General Meeting of the farm's members) and then submitted to the Raion Administration.

In compliance with the Resolution No. 96 of the Government of the RF the following documents and materials are necessary:

- **General information on the reorganizing farm, including (Appendix 10):**
 - requisites of the reorganizing agricultural enterprise;
 - the decision on the issuance of certificates of title to the land and property shares;
 - information on land shares, including data on agricultural land in common ownership, the total number of land share owners and the size of land share in hectares and hectare-points;
 - information on property shares, showing the value of the property share fund, the total number of property share owners.
- **Copy of the State Act for Land Entitlement**
- **Inventory Act on agricultural land in common share property (Appendix 5);**
- **Lists of land and property share owners (Appendix 11);**
- **Land share calculation (Appendix 12);**
- **Balance of the reorganized commercial agricultural organization, used to calculate property share fund;**
- **Fixed assets Schedule, including those liable to distribution, social sphere assets to be transferred to the local administration and the assets to be written off (Appendix 6);**
- **Current assets Schedule (Appendix 6);**
- **Share fund calculation (Appendix 8);**
- **Property share calculation (Appendix 8).**

4.2.7.b. Issuance of Property Share Certificates

The right of property share ownership commences on the date of the General Meeting of the members of the commercial agricultural organization, at which time the list of persons entitled to property shares is approved.

All the owners of property shares must be issued **certificates according to the approved model stating the value of the property share.**

During the reorganization of an agricultural enterprise the Commission on Land Privatization and Farm Reorganization must prepare and issue certificates to all the owners of property shares.

A sample property share certificate can be found in Appendix 13.

4.2.7.c. Issuance of Land Share Certificates

The Raion Administration, upon receipt of the relevant documents must, within one month, make a decision on the transfer of land held in common property by members of the agricultural enterprise. The issuance and deadline (if the decision to issue is made) for the preparation and issuance of certificates of titles to land shares must come no later than one month after the decision to issue them.

The right to land share ownership commences on the date that the Raion Administration makes a decision to transfer the land held in common to the participants of the agricultural organization.

Preparation and issuance of certificates of titles to land shares and their registration must be done by the Raion Committee of Land Resources and Land Survey.

Upon application **land share owners are issued certificates according to the model** approved by the Decree of the President of the RF No. 1767 of October 27, 1993 (see Appendix 14). The certificate shall state the land share size in hectares or hectare-points.

At the Commission's discretion a General Meeting can be called for the purpose of certificate distribution. At this meeting it is advisable to inform land and property owners of options available to them regarding the disposal of their certificates in addition to the next stage of reorganization, which is the setting up of new agricultural organizations.

4.3. Rights and Opportunities of Land and Property Share Owners

With the aim of securing the rights of land and property share owners, the Government of the Russian Federation adopted Resolution No. 96 on February 1, 1995, thereby approving official recommendations that specify opportunities for the use of land and property shares.

4.3.1 Methods for Land Share Disposal

The land share owners have the right to:

1) Receive land plots in kind against land shares for the purpose of agricultural production.

In accordance with Resolution No. 96, a land share owner or a group of land share owners, as well as persons authorized by the owners, are entitled to land plots in kind based on Russian legislation.

To receive an integral land plot in kind, the applicants may unite land shares which they have bought; leased, and acquired through other means, in accordance with the legislation of the Russian Federation.

Land share owners should keep in mind that the total area of land plots received against land shares which become property of an individual or a legal entity (calculated per worker) must not exceed the size of land plots allocated to individual (peasant) farms.

Though the size of land shares expressed in hectare-points is the same for the farm members, the actual size of land plots allocated against land shares can vary with land quality - the better the land quality, the smaller the size of the plot.

2) Contribute land shares or usage rights for a certain period of time into the charter capital of one of the agricultural enterprises established on the basis of the reorganizing farm.

Contribution of land shares or usage rights into an organization's charter capital shall take effect in compliance with the organization's founding agreement, unless otherwise provided for by the legislation of the Russian Federation.

Land share usage rights can be contributed to the charter capital only if the organization's founding agreement has a clause regulating utilization of the usage rights.

Value of land share usage rights in Rubles is agreed upon by the members of the agricultural commercial organization. The value is used for the calculation of shares in the organization's charter capital, as well as property share values and the value of other contributions.

Dividends paid per ruble contributed to the charter capital in the form of land share usage rights should equal dividends paid for other types of contributions.

Land share use rights can be contributed to the organization's charter capital for a period of not more than **three years**. The land share owner retains the right to receive a land plot in kind against his land share in instances in accordance with Russian legislation.

At the expiration of the period for which the land share usage rights have been contributed to the charter capital, the land share owner retains the right to receive a land plot in kind against his land share in accordance with land legislation.

Those who have contributed land shares or land share usage rights to the charter capital of an agricultural commercial organization (in compliance with its charter agreement) shall be issued documents certifying that their share is included in the authorized capital of the organization.

3) *Lease shares for a short term* for the purpose of agricultural production.

Land shares may be leased to other land share owners who have received shares for the purpose of establishing an individual (peasant) farm. They may also be leased to agricultural organizations set up by other owners.

Both lease and payment terms are regulated by agreements. Legislation does not regulate the form of lease payment. Land may be leased for cash, a share of the crop, or services; i.e., chopping wood, home repairs, plowing vegetable gardens, etc.

With the landlord's consent, the tenant may take action to receive a land plot in kind against the leased land shares.

An entry showing the land share lease should be made in the landlord's certificate of land title.

If the landlord terminates the lease agreement with his former tenant, the landlord may, at his discretion, receive his land plot in kind and use it in compliance with current legislation.

4) *Sell land shares fully or partially* for the purpose of agricultural production.

Other land share owners of the reorganizing farm, or of recently established organizations that have preemption rights, may take advantage of this option.

When a land share is sold or purchased, there should be no preliminary allocation of the land plot.

The buyer and the seller sign a land share sale and purchase agreement which must be registered at the Raion Land Resources and Land Survey Committee, and notarized.

Land shares may be sold for cash, goods, or services; and payment may be made in a lump sum, or by installments.

Land share ownership comes into effect on the date of registration of the purchase and sale agreement, unless otherwise provided for by current legislation, and irrespective of whether the agreement provides for payment in a lump sum or by installments.

5) *Exchange land shares (or a part thereof) for property shares* or vice-versa: This option is suitable if the intended activities require equipment, fixtures and fittings and buildings (for example a cattle farm or a repair shop) and not land.

Such transactions are made according to land share purchase and sale agreements, and to the monetary equivalent of the property share value.

Land and property share values can be combined and paid in cash.

6) Land share owners can use their land shares or a part thereof *in order to enlarge the size of the plot used for private plot farming*, or for individual housing construction up to the established norm.

7) Land share owners may *transfer* their land shares (or a part thereof) *by will or by gift* to one of the farm members or to any citizen:

The land share can be passed as a gift to children and grandchildren who will later decide how to use it. If a individual peasant farm is set up, family members can pass their shares as a gift to the head of the peasant farm. A deed of gift shall be notarized and registered at the Raion Committee on Land Resources and Land Survey.

The transfer of one land share to several agricultural commercial organizations is prohibited.

4.3.2. Methods for Property Shares Disposal

Property share owners have the right to:

1) *Receive property in kind* for the purpose of establishing an individual (peasant) farm or an agricultural organization, or for individual entrepreneurial activities.

Each property share owner or a group of property share owners, as well as other property share holders are entitled to property against their shares in accordance with legislation of the Russian Federation.

Property share bidders attempting to integrate property shares have the right to buy up property shares from other property owners or to make other transactions in accordance with the legislation of the Russian Federation.

The total value of property for which property share owners are bidding must not exceed the total sum of share rubles as stated in the property share title certificates. During property distribution, property value is appraised utilizing those prices that formed the basis for the calculation of property shares.

If it is not possible to receive the property share in kind, monetary compensation for the property share is paid. The amount of compensation is based on the book value of property shares in accordance with the latest revaluation.

2) *Contribute their property shares to the charter capital* of an agricultural enterprise in exchange for a share of its charter capital, in compliance with its founding documents:

The share of charter capital of an agricultural commercial organization should be calculated in relation to the value of the property share contributed to its charter capital.

Each property owner shall receive documents specifying his share in the charter capital of the agricultural organization, the number of votes in the highest management body, and other information.

Contributions made to charter capital entitles the contributor to participate in any dividends payable. The amount of dividend payment received is subject to the profitability of the organization and the amount of share held in the charter capital.

A shareholder of an agricultural commercial organization loses his right to demand property in kind against his/her property share contributed to the charter capital of that organization. He/she is entitled to sell his share, or leave the organization and receive compensation for his/her share in the charter capital of the organization. He/she also has other rights as specified by legislation of the Russian Federation and the organization's founding documents.

3) *Sell property shares or a part thereof* at contract prices to other land and property share owners of agricultural commercial organization, as well as to peasant farms set up by property share owners in compliance with procedures provided for by legislation of the Russian Federation; the seller and the buyer sign a property share purchase and sale agreement. Payment for the property share can be made in a lump sum or by installments.

4) *Trade their property shares or a part thereof for land shares.*

5) *Pass their property shares or a part thereof as a gift to another person(s) or inherited by way of a will* in compliance with legislation of the Russian Federation.

CHAPTER FIVE

FORMATION OF NEW AGRICULTURAL ENTERPRISES

Contents:

5.1. Basic Principles

5.2. Legal Basis

5.3. Procedures for Establishing New Agricultural Enterprises

5.3.1. Main Steps for Formation of Agricultural Enterprises

5.3.2. Legal Forms

5.3.3. Preparation of Foundation Documents

5.1. Basic Principles of Forming New Agricultural Enterprises

The formation of new agricultural organizations is founded upon ownership rights to land and property shares.

Having received land and property share certificates during the preparatory stage, share owners are in a position to exercise their ownership rights.

During the process of reorganization, ***all land and property share owners must decide how to dispose of their shares.*** The deadline for making this decision is set by the Inter-Farm Reorganization Commission.

Current legislation of the Russian Federation provides land and property share holders with a variety of ways to dispose of their shares. (Section 4.3.)

Share owners possess the following rights:

- ***to acquire land and/or property shares in-kind*** to begin a peasant farm, individual entrepreneurial activity, or a commercial agricultural enterprise;
- ***to contribute land shares*** (or the right to use them for a certain period of time) ***and property shares to the charter capital of agricultural enterprises*** formed on the basis of the reorganizing farm;
- ***to lease land shares to citizens or enterprises*** engaged in agricultural activity;
- ***to sell land shares*** (or part thereof) ***as well as the property shares*** (or part thereof) to enterprises or other owners for the purpose of agricultural production;
- ***make a gift transfer*** of land shares and/or property shares (or parts thereof);
- ***exchange land shares*** (or part thereof) ***for property shares*** and vice versa.

Owners choose how to dispose of their land and property shares on an individual basis within the framework of current legislation. ***Land and property shares can be used for agricultural production only.***

In accordance with their rights, owners of land and property shares may:

- begin ***individual entrepreneurial activity***;
- establish ***peasant (individual) farms***;
- establish ***agricultural commercial enterprises*** in various legal forms on the basis of common usage of land and property shares.

Principles of New Enterprise Formation

- If land and property share owners prefer to work in a collective, they *may consolidate their shares* on various terms. A share owner may contribute shares to the charter capital of an organization, or buy or lease shares from other share owners who do not want to, or are not capable of, becoming entrepreneurs.

In order to protect the rights of share owners during the process of new enterprise formation, agreements between owners of land and property shares in connection with the disposal of their shares *must be concluded using appropriate contracts* (Chapter 8).

- *A decision on which type of enterprise to establish or which of the newly established organizations to join* is made by land and property share owners on the basis of their rights, opportunities and analysis of current economic conditions.
- One of the major factors during reorganization is *leadership* - the supply of resourceful individuals among the farm's members who can assume responsibility for establishing new enterprises and whom other farm members can entrust with the right to use their land and property shares. It is usually farm managers, farm specialists, and the more productive workers who become the initiators of reorganization.

The Intra-farm Reorganization Commission provides all the land and property share owners with reliable information on newly-created enterprises and their leaders, and also provides the leaders with the opportunities and necessary conditions for acquainting the share owners with their programs.

- During reorganization, farms may *break up into several smaller independent entities*.

This division may be accomplished on a *territorial basis* and result in the emergence of smaller and more manageable enterprises.

The division can also be accomplished on a *production basis*. In this case, new enterprises are established on the basis of existing units and infrastructure, or are established anew and are assigned land plots, equipment, machinery and buildings against the land and property shares of those farm members who decided to become members of new enterprises.

- Depending on their *specialization*, new agricultural enterprises can include:
 - **agricultural production enterprises** of various specializations. The basis for these enterprises is usually the existing production infrastructures, crop growing teams, cattle breeding farms, etc.

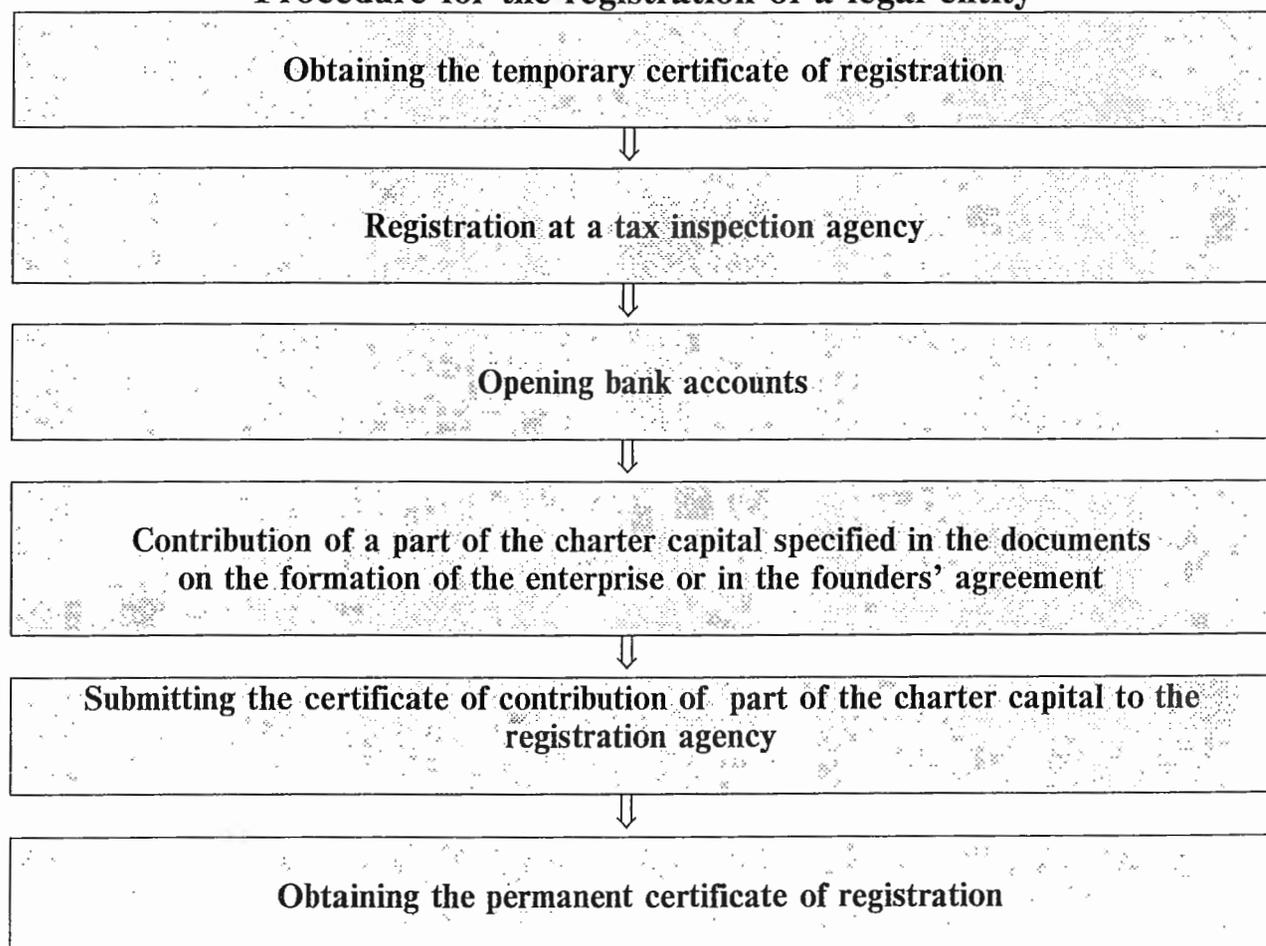
- **processing enterprises** (bakeries, smoke houses, fruit and vegetable processing facilities, milk processing facilities, etc.).
- **service enterprises**, specializing in sales and input supply. The basis for these enterprises may be mechanized threshing units, grain, chemicals, fuel storage, etc..
- **repair and maintenance enterprises**, specializing in the repair and maintenance of agricultural machinery, or transportation services. These enterprises can be established on the basis of garages, repair shops, etc.
- **New enterprises may be established in various legal forms** envisaged by the current legislation (Section 5.3.2.). Depending on the specific situation individual entrepreneurs or peasant farmers may conduct economic activities without forming legal entities.
- **The process of establishing new agricultural enterprises** during farm reorganization is described in Section 5.3.1.

5.2. Legal Basis for Forming New Agricultural Enterprises

The legal basis for this stage is contained in the relevant legislation which lists the legal/organizational forms of legal entities, defines their characteristics, and sets procedures for their creation and activity. A number of normative acts dealing with different types of legal entities are in the planning and development stage. At the present time, the principle document governing legal entities is Chapter 4 of the *Civil Code*.

- Article 48 of the *Civil Code* lists the following *characteristics of legal entities*:
 - The presence of separate property;
 - Separate responsibility (liability) for its activities;
 - The assumption of rights and responsibilities as a separate entity;
 - The right to sue and be sued in court.
- Legal entities are divided into commercial and non-commercial organizations, depending on their objectives and activity (refer to Chapter 2, table 3).
- A legal entity is considered to be created from the moment of the State registration thereof and operates on the basis of its founding agreement and charter or founding agreement only.

Procedure for the registration of a legal entity



During the formation of a legal entity the founders should determine the amount of the charter capital and contribute as a rule 50% thereof by the moment of state registration. During the formation of a production cooperative the participants contribute 10% of their shares. During reorganization of an agricultural enterprise the participants can contribute their land and property shares to the charter capital of the newly created organization. The procedure for disposal of the above shares was approved by Resolution # 96 (February 1, 1995) "On Procedures for Implementing the Rights of Owners of Land and Property Shares".

5.3. Procedures for Establishing New Agricultural Enterprises

5.3.1. Main Steps in the Formation of Agricultural Enterprises

The process of establishing new agricultural organizations during farm reorganization consists of the following **main steps**:

5.3.1.a. The formation of a promotion group which carries out preparatory work. This group is formed by the people who want to establish a new enterprise (the promoters).

5.3.1.b. Feasibility Study

During this stage a feasibility study of the economic activity of the new enterprise is carried out.

The promotion group should determine the main types of activity of the new enterprise and its specialization. The promoters should make an estimate of the possibilities for the enterprise's development in the market oriented economy.

The feasibility study should include an estimate of:

- **production volume, scope of activity** for the main and auxiliary types of activity,
- **marketing opportunities,**
- **need for agricultural land,**
- **need for property used in agricultural production**, including buildings, machinery and equipment (on the basis of the types of activity and planned production volume),
- **need for financial resources and credits,**
- **possibilities for cooperation** with other new enterprises, first of all with the enterprises that have an open production cycle.

On the basis of the estimates, size of land and property shares, it is necessary to assess the number of members of the new organization and the number of land and property shares to be purchased and leased. An estimate of the necessary number of permanent and seasonal workers is also carried out.

While estimating the need in resources one must determine which production factor - labor, land, assets or financial resources - may become the weakest link in the production chain. One must bear in mind that the enterprises with a small number of workers enjoy some tax privileges.

One must also try to find out whether this type of activity will bring profit and whether it is possible to sell one's products. This study will later become the basis for a business plan. (Chapter 9).

5.3.1.c. The Choice of Legal Form

The Civil Code of the Russian Federation (1994) provides for the following legal forms of commercial agricultural organizations:

- Full partnership;
- Limited partnership (or kommandit partnership);
- Limited liability society;
- Additional liability society;
- Closed joint-stock society;
- Open joint-stock society;
- Production cooperative (artel).

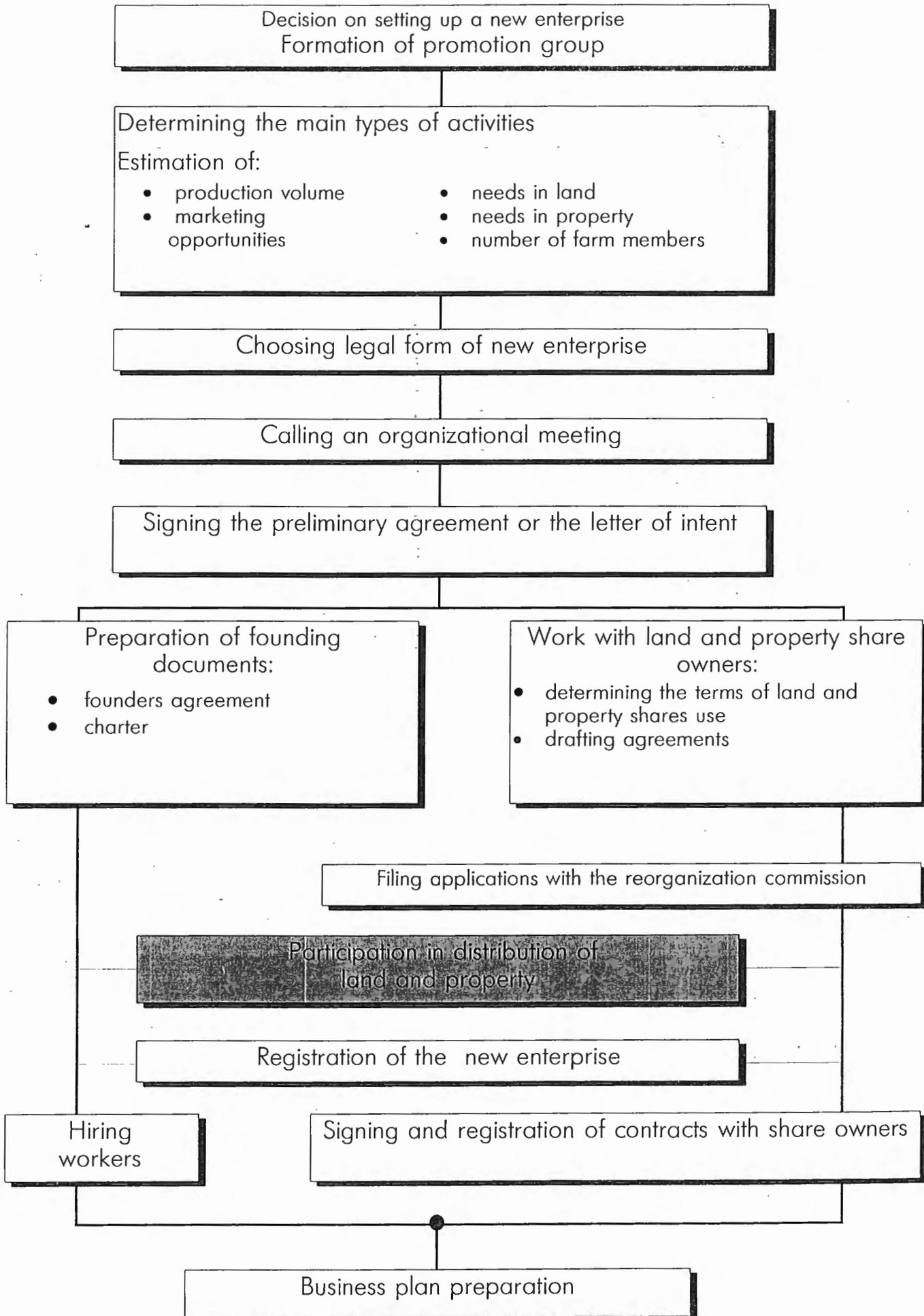
For the characteristic of these legal forms and their comparative analysis refer to Section 5.3.2. of this Chapter.

Criteria for selection:

The most important criteria for the selection of a legal form of the new enterprise are:

- ***the level of liabilities assumed by the shareholders.*** The liabilities of the enterprise members may extend to:
 - their property, as with a full partnership or full partners in a limited partnership;
 - their share of contribution, as with a limited responsibility partnership or contributors in a limited partnership;
 - shares in stock companies, as with joint stock companies, etc.
- ***the distribution of profit:***
 - which, in the case of cooperatives, must be proportionate to one's labor contribution;
 - which, in the case of economic societies and partnerships, must be proportionate to the contributions made to the charter capital or shares in the joint capital;
 - which, in the case of joint stock companies, takes the form of dividends received.
- ***the right and obligation to work in the new enterprise;***
- ***conditions for leaving the new organization*** (one of the most important criteria). These conditions might take the following forms:
 - The right to leave the organization at any time, irrespective of the wishes of other participants (economic entities);
 - The right to receive the value of property in joint capital (in a partnership);
 - The right to receive the value of the share or corresponding property at the end of the fiscal year (in a cooperative).
 - Other conditions.

Setting up new agricultural enterprises



When choosing the legal form of the new enterprise, it is necessary to carefully analyze all legal forms, choosing the best alternative for the particular circumstances.

In a large collective, for example, there would be a natural reluctance to have more privileged members (such as in a limited partnership). In an organization where the management is undertaken by full partners, and the contributors do not have the right to participate in the management or entrepreneurial activity of the partnership.

In the case of a small group of people who share the same ideas and levels of qualification -- people who know and trust each other -- then a limited partnership may be the best legal form for their enterprise.

5.3.1.d. An Organizational Meeting

This meeting should be attended by those land and property share owners who are interested in establishing a new enterprise and have the necessary qualifications to do so. These individuals can become members of the new enterprise, as well as land and property share owners whose shares the enterprise would like to lease or to buy (for example, people who live close to the territory where the new enterprise is going to operate). Other peasant farms and agricultural organizations that have seceded from the farm earlier may be invited as well, before the decision to reorganize is made.

After the meeting, it is recommended that a *letter of intent* (Appendix 15) or a *preliminary agreement* (Appendix 16) be signed, confirming the decision to establish a new enterprise.

A preliminary agreement obligates the contracting parties to sign the founding documents of the new enterprise.

The letter of intent or preliminary agreement should be signed by persons who have decided to become members of the new enterprise and by persons who intend to do so in the near future. This letter may also be signed by the members of the reorganized farm who wish to lease their land and property shares or let others use their shares on other conditions.

The letter of intent or preliminary agreement is the basis for future work with land and property share owners. The signing of these documents is not mandatory, but is recommended when there are many potential members and a number of whom have not made a final decision on whether to participate in the formation of the new enterprise.

5.3.1.e. Founding Documents

After the meeting, the promotion group **prepares a founding agreement** which is then discussed and adopted by the meeting of the potential farm members. The agreement is then signed by the persons contributing their land and property shares into the charter capital of the organization (Section 5.3.3.). The charter of the organization is also drawn for economic societies.

The organization can be officially registered only upon the submission of the **founding documents and the divisional balance sheet**, reflecting land and property distribution.

5.3.1.f. Discussion of Terms for Participation in the New Enterprise

Simultaneously with the preparation of the founding documents, or even before registration, the promotion group **contacts land and property share owners** in order to discuss the terms and procedures for participation in the formation of the new enterprise.

- The terms of agreements are determined, be they for purchase/sale, lease, gift, etc., and **draft contracts** are prepared.
- Land and property share owners **file a declaratory statement** with the Reorganization Commission regarding the method of land and property share disposal. Together with the letter of intent (or preliminary agreement) and draft agreements, these declaratory statements are a guarantee that the obligations of both parties shall be met. Moreover, these documents serve as the basis for the participation of the new enterprises in land and property distribution.

Newly established agricultural organizations **apply for participation in the distribution of land and property** of the farm. Applications for participation are filed in accordance with the number of land and property shares that the new enterprise has obtained (whether obtained through acquisition or permission for use during land and property distribution).

After the registration of new enterprises, **contracts with land and property share owners are finalized and signed** (Chapter 7).

5.3.1.g. Creation of Associations (Unions)

Newly-created agricultural organizations may establish non-profit associations and unions in order to coordinate activities and represent and protect common proprietary interests.

5.3.2. Legal Forms of New Agricultural Enterprises

A legal entity that is a commercial organization can be organized as:

Full (General) Partnership: According to Article 69 of the *Civil Code*, a full partnership has the status of a legal entity, and its members (full partners) engage in entrepreneurial activities in the name of the partnership and have joint liability for its obligations up to the extent of their individual shares in the enterprise. A full partnership is created and operates on the basis of its founders' agreement which must be signed by all of its members. This legal form is beneficial for a combination of several individual peasant farms.

Limited Partnership: The most common form, in our opinion, is the limited partnership (*See* Articles 82-86 of the *Civil Code*) in which one or more of the participants (general partners) act in the name of the partnership in entrepreneurial activity and assume the risk of losses arising from the partnership's commercial activities, while the other partners (limited partners) are liable for losses and obligations only up to the limit of their investment in the partnership, and do not take part in the actual commercial activities of the entity.

This form of organization is acceptable only when some of the participants in the partnership are working and assume the risk of loss against all of their property; the others, pensioners for instance, transfer their land or property shares to the partnership, but do not take an active part in or work for the entity. They do, however, receive a share of the profits proportionate to their invested land and property shares. Such a partnership permits the working members to decide all organizational, administrative, and other issues independently and efficiently.

Limited Liability Societies: Based on Articles 87-94 of the *Civil Code*, one or several individuals can establish a limited liability society the charter capital divided into shares defined by the founding documents. The participants in a limited liability society are not liable for its obligations and assume the risk of losses connected with the activity of the society only up to the limit of their investment.

A limited liability society is created only by the working participants. However, their number should not exceed the number permitted by law; for example, in a production company, not more than 200. In other situations, it should be reorganized as a joint stock society. Within a year, and prior to the expiration of that term, the company is liquidated by court proceedings if the number of participants is not reduced to the number permitted by law. At least one-half of the charter capital of a limited liability society must be paid by its members prior to its registration.

Additional Liability Society: Article 95 of the *Civil Code* provides for the creation of "a society with additional liability." The principle characteristic of this legal form is that the members assume personal liability for losses and obligations of the company arising from its activities -- not only up to the amount of their investment, but with a proportionate share of their personal property. This organization is preferable from the point of view of the partners, since it guarantees the reimbursement of losses not only on account of the charter capital, but also with respect to other property of the founders.

Joint Stock Societies: Articles 97-104 of the *Civil Code* deal with Joint Stock Societies (open or closed type). The charter capital of a joint stock society is divided into specifically-defined shares of stock. In this regard, special accounting systems are required to keep track of the stock distribution and accounts.

A whole series of normative acts (e.g., Instruction of the Ministry of Finance of March 3, 1992 "On the Rules for Issuing and Registering Stocks on the Territory of the RF", Decree of the President # 2063 "On Measures to Regulate the Market of Securities on the Territory of the Russian Federation", Resolution of the Government of January 24, 1995 "On Urgent Measures to Prevent Counterfeiting Securities Issued in the RF" and others regulate procedures for issuing stock, including specific requirements for the preparation and protection of securities.

Extensive problems crop up during the creation and operation of this type of organization including during issuance of stocks and securities. For this reason it is not recommended for newly created agricultural enterprises.

Production Cooperatives: Production Cooperatives (Artels) are dealt with in Articles 107-112 of the *Civil Code*. The special feature of a production cooperative is that it is created through a voluntary alliance of citizens for joint production or other economic activity (production, processing, sale of goods, agricultural or other produce; contract labor; trade; service industries; and the rendering of other services) on the basis of their contributed labor and property shares.

The *Civil Code* sets forth several requirements for the creation and operation of a production cooperative. Article 108 specifies that the number of members of a cooperative must be at least five (5). Further, a member of a cooperative must contribute at least ten percent of his share prior to registration, and the remaining contribution must be paid within one year after registration. Profits of the cooperative are divided between its members in accordance with their labor contribution.

Peasant Farms: A special legal status is specified for individual **peasant farms**. Activities of peasant farms were previously regulated by the Law "On Peasant Farms" dated November 22, 1990 (as amended on 27 December 1990, 24 June 1992, 28 April 1993 and 24 December 1994). This law guaranteed citizens the right to create peasant farms, the right to economic independence, assistance in their activities, government protection of their legal interests, and the right to freely form cooperatives. In accordance with this law, peasant farms were independent economic subjects with the rights of legal entities.

Currently, as a result of Articles 257 of the Civil Code, individual peasant farms have lost the status of legal entities. **The property of a peasant farm is jointly owned by its members.** As a result, members' shares in a peasant farm are considered equal, unless an agreement provides otherwise.

The management authority of a peasant farm is vested in its head, who acquires the status of entrepreneur from the moment of the farm's registration (Article 23 of the Civil Code).

The activity of the peasant farm is regulated by the articles of the Civil Code of the RF that regulate the activity of legal entities which are commercial organizations. In other words, the head of a peasant farm using the rights of a legal entity, can exercise proprietary and personal rights, bear liabilities and be a plaintiff or defendant in court.

Members of a peasant farm can set up an economic partnership or a production cooperative on the basis of the farm's property.

One should consider that **a land plot and operating funds belonging to a peasant farm cannot be divided if one member decides to withdraw.** Withdrawing members have the right to receive monetary compensation only, in an amount proportionate to their share in the common property of the farm.

Recent legislative amendments that have taken away the status of legal entity from peasant farms play a negative role in the relationship not only with the partners, but

also with local governmental authorities. As of yet, there is no clear answer as to whether or not a peasant farm or whether the head of the farm is required to report its earnings to the tax inspector. There is yet another problem caused by the loss of status of a legal entity, in that peasant farm members cannot be founders of other legal entities, such as associations or unions. According to Articles 121-123 of the *Civil Code*, associations and unions are legal entities, but individual peasant farms are not.

Unitary enterprises (Art. 113-115 of the Civil Code): Unitary enterprises may be created for the purpose of employing workers made redundant as a result of reorganization and with the aim of rationally utilizing federal or municipal property.

It is recommended that unitary enterprises be set up when there is unused municipal property and workers made redundant during farm reorganization agree to work on the conditions determined by the municipality.

For example, a daily service enterprise can be set up on the basis of the day care center transferred to the municipality and which is not used for the designated purpose. The head of the unitary enterprise is appointed by the owner of the property, that is the local administration. The profit derived by the unitary enterprise is distributed between the owner of the property (municipality) and the workers' collective.

With the aim of broadening the sphere of activities and representing and defending the interests of the legal entity outside the area covered by its main office, an organization may create a representative office or affiliate.

Representative offices are a distinct branch of a legal entity, located in another place, which represents and defends the interests of the legal entity.

A **subsidiary** is a distinct branch of a legal entity that is located in another place and conducts all or part of its functions as well as the functions of a representative office.

Representative offices and subsidiaries are not considered independent legal entities, but act on the basis of their terms of reference ("polozheniye")

The charts and diagrams (11-33) provide an overview of the characteristics of the aforementioned organizations, their operation and creation, the responsibilities of their founders, terms and conditions for profit and several other characteristics.

Table 11

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Full partnership <i>art. 66-81</i>	
Legal entity or not	Yes
Company name	Must contain either the names of all the participants and the words “full partnership”, or the name of one or several participants with the addition of the words “and company” or “full partnership”
Founders	Natural persons - entrepreneurs and/or legal entities - commercial organizations
Responsibility of founders	Unlimited subsidiary responsibility with all of the property belonging to partners A participant who has withdrawn from the partnership is responsible for the debts of the partnership for a period of 2 years from the date of the annual report approval (for the year when he withdrew)
Founding documents	Founding Agreement
Joint capital*	<i>The minimum size is not determined</i>
Issuance of securities	Bill of exchange
Voting (management))	By unanimous or majority vote. One participant - one vote.
Profit distribution	In proportion to participatory shares in joint capital. May be stipulated otherwise in the agreement.
Withdrawal of participants	<ol style="list-style-type: none"> 1. Declare withdrawal 6 months in advance. 2. The participant is paid the value of the part of the property in proportion to the participatory share in the joint capital; 3. The participant has the right to transfer his share or part thereof to another participant or to a third person
Inheritance	The inheritor can join the partnership with the consent of other participants
Expulsion	By unanimous decision of the remaining participants in a juridical procedure

* Cash, securities, property, rights that have monetary value

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Limited (kommandit) partnership <i>art. 82-86</i>	
Legal entity or not	Yes
Company name	The names of all the full partners and the words “limited partnership” or “kommandit partnership” or the name of not less than one full partner with the addition of the words “and company” and also the words “limited partnership” or “kommandit partnership”
Founders	Several citizens - entrepreneurs and/or several contributors (kommandists)
Responsibility of founders	<i>Full partners</i> - with their property, <i>contributors</i> - with their share.
Founding documents	Founding Agreement
Joint capital*	<i>Minimum size is not determined</i>
Issuance of securities	Bills of exchange, bonds
Voting (management))	Contributors do not vote, full partners manage the partnership.
Profit distribution	In proportion to the shares in the joint capital. May be specified otherwise.
Withdrawal of participants	<ol style="list-style-type: none"> 1. <i>Full partner</i> - must declare 6 months in advance; <i>Contributor</i> - upon the completion of the fiscal year. 2. Part of the value of property in proportion to the share in the joint capital; 3. Transfer the share or part thereof to another partner or third person.
Inheritance	Inheritor can join the limited partnership with the consent of other full partners.

* Cash, securities, property, rights that have monetary value

Table 13

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Limited responsibility society <i>art. 87-94</i>	
Legal entity or not	Yes
Company name	Must contain the name of the society, and also the words "limited responsibility"
Founders	One or several citizens, legal entities
Responsibility of the founders	Risk of losses within the limits of the contributions made by participants
Founding documents	Founding agreement, charter, in the event of one founder - no founding agreement
Charter capital	100 times minimum wage, in the event of foreign investor - 1000 times minimum wage, 50% must be contributed by the moment of registration
Issuance of securities	Bills of exchange, bonds
Voting (management)	In proportion to the contributions into the charter capital, unless otherwise provided for
Profit distribution	In proportion to the contributions into the charter capital, unless otherwise provided for
Withdrawal of participants	The participants have the right to withdraw from the society irrespective of the consent of others
Inheritance, succession	With the consent of other participants, a refusal to consent entails the duty of the society to pay the value of the contribution or issue property in kind.

** Decree of the President of July 8, 1994 # 1482

Table 14

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Additional responsibility society <i>art. 95</i>	
Legal entity or not	Yes
Company name	Must contain the name of the society, and also the words "with additional responsibility"
Founders	One or several citizens or legal entities
Responsibility of the founders	Risk of losses within the limits of the contribution + <i>additionally</i> with personal property in proportion to the value of the contribution
Founding documents	Founding agreement, charter, in the event of one founder - no founding agreement
Charter capital	100 times minimum wages, in the event of foreign investor - 1000 times minimum wage, 50% must be contributed by the moment of registration**
Issuance of securities	Bills of exchange, bonds
Voting (management)	In proportion to the contributions into the charter capital, unless otherwise provided for
Profit distribution	In proportion to the contributions into the charter capital, unless otherwise provided for
Withdrawal of participants	The participants have the right to withdraw from the society irrespective of the consent of others
Inheritance, succession	With the consent of other participants, a refusal to consent entails the duty of the society to pay the value of the contribution or issue property in kind.

** Decree of the President of July 8, 1994 # 1482

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Open joint-stock society <i>art. 97-104</i>	
Legal entity or not	Yes
Founders	Citizens and/or legal entities
Responsibility of the founders	Value of stocks
Founding documents	Charter
Charter capital	1000 times minimum wage **
Issuance of securities	Stocks, free sale of stocks on the market of securities
Voting (management)	Only common shares vote, one share - one vote
Profit distribution	Dividends
Withdrawal of participants	Free sale of stocks

** Decree of the President of July 8, 1994 # 1482

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Closed joint stock society <i>art. 97-104</i>	
Legal entity or not	Yes
Founders	Citizens and/or legal entities;
Responsibility of the founders	Package of shares
Founding documents	Charter
Charter capital	1000 times minimum wage
Issuance of securities	<i>No open subscription</i> for the stocks
Voting (management)	Common shares : one share - one vote
Profit distribution	Dividends
Withdrawal of participants	Stocks can be sold with the consent of other participants. Stockholders have the preferential right to buy stocks.

** Decree of the President of July 8, 1994 # 1482

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Production cooperative (artel) (art. 107-112) - voluntary association of citizens on membership basis for the purpose of joint production or other economic activity based on their personal labor participation and combining property share contributions by the members thereof	
Legal entity or not	Yes
Company name	Must contain its name and also the words "production cooperative" or "artel"
Founders	Citizens, also legal entities. Minimum number of participants - 5 (art. 108)
Responsibility of the founders	Within the limits of their share contribution, both contributed and not contributed. Members of a PC bear subsidiary responsibility for the obligations of the cooperative in compliance with law and the charter.
Учредительные документы	<p style="text-align: center;"><u>Charter</u></p> <p><i>Note: each member must work in the cooperative</i></p> <p><u>Structure:</u></p> <ul style="list-style-type: none"> • Name of PC • address • management procedures, composition and powers of the management bodies • procedure for taking decisions • amount of share contributions and responsibility for failing to contribute them • profit and losses distribution (as a rule, in proportion to labor contribution) • responsibility of the members for the debts of PC
Charter capital	By the date of registration each member must contribute 10% of his share contribution (p.2,art.109)
Property of PC	<ul style="list-style-type: none"> • property of the PC is divided in proportion to its members • the Charter may provide for deeming a part of property an indivisible fund (this decision must be taken unanimously) • the PC does not have the right to issue stocks • at the moment of state registration of the PC each member must contribute 10% of his share, the rest - within one year
Issuance of securities	No
Voting (management)	One member - one vote
Profit distribution	In proportion to labor contribution, the charter may provide for otherwise
Withdrawal of participants	At the citizen's discretion he may be paid the value of his share or issued property in kind. Settlements are made upon the approval of the annual balance sheet.

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Peasant (individual) farm <i>art. 257-259</i>	
Legal entity or not	Not
Founders	Citizens
Responsibility of the founders	Common property (shares of the members are equal) unless otherwise provided for
Founding documents	Agreement
Charter capital	No
Issuance of securities	No
Voting (management)	The head of the farm is the entrepreneur
Profit distribution	In proportion to labor input, or as farm members agree
Withdrawal of participants	The land plot and means of production belonging to the peasant farm shall not be divided in the event of withdrawal of one member. The withdrawing person has the right to get monetary compensation commensurate with his participatory share.

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Consumer cooperative - noncommercial organization, legal entity art. 116 <i>Exception: profit is distributed among the members</i>	
Legal entity or not	Yes
Company name	The name must contain an indication of the principal purpose of its activity, and also the words “cooperative”, or consumer cooperative”, or “consumer society”
Founders	Citizens and legal entities
Responsibility of the founders	The members bear responsibility for the liabilities of the cooperative in accordance with the law and the charter. The losses must be covered within three months after annual balance sheet approval.
Founding documents	<u>Charter</u> <u>Structure:</u> ⇒ name. ⇒ address ⇒ management procedure, composition and powers of management bodies ⇒ procedure for decision taking ⇒ amount of share contributions, procedure for their contribution, responsibility for delays ⇒ procedure for covering the losses of the cooperative
Charter capital	At the moment of registration each member must contribute 50% of his share contribution, the rest within a year
Property of the cooperative	<ul style="list-style-type: none"> • Property is divided into the shares of the members • The charter may provide for including a part of property in the indivisible fund (this decision must be taken unanimously)
Issuance of securities	No
Voting (management)	One member - one vote
Profit distribution	In accordance with the charter
Withdrawal of participants	At the participant’s discretion he is paid the monetary value of his share or is issued property in kind
Liquidation	<i>In the event of failure to cover the losses the cooperative can be liquidated by the decision of the court or at the demand of the creditors</i>

Unitary enterprises (UE) (art. 113-115, 294-297)

Unitary enterprise - State or municipal enterprise, *not endowed with the right of ownership* to property allocated to it by the owner (property is indivisible and cannot be distributed as shares).
Company name of the UE must contain an indication of the owner of the property.

Types of Unitary enterprises

UE based on the right of *economic jurisdiction*

Property belongs to the State or municipality
Created by decision* of the State agency or municipal agency empowered to do so
Responsibility of the enterprise:
The owner is not liable for the obligations of the enterprise

UE based on the right of *operative management* (federal treasury enterprise)

Property belongs to the State
Created by decision* of the Government of the RF
Responsibility of the enterprise:
 The enterprise is liable for its obligations with all its property.
The Russian Federation bears subsidiary responsibility for the obligations of the enterprise.

The charter of the Unitary enterprise contains:

- name of the enterprise and an indication of the owner (for the treasury enterprise - that it is a treasury enterprise)
- address
- management procedures
- purpose and types of activity
- amount and sources of the charter fund.

* The same agency approves the charter and appoints the head of the enterprise (who reports to this agency)

Unitary enterprises (UE)
(art. 113-115, 294-297 of the CC of the RF)

Proprietary rights of the Unitary enterprise and of the Owner

UE based on the right of *economic jurisdiction*

UE owns, uses, disposes of property *within the limits determined by the owner.*

- **The owner takes decisions on:**
 - ⇒ creation, reorganization, liquidation of the UE
 - ⇒ subject and purpose of activity
 - ⇒ control of the use and safety of property
- The owner has the right to get a part of the profit

UE based on the right of *operative management (federal treasury enterprise)*

- Owns and uses property in accordance with the purpose of its activity and tasks set by the owner
- *Disposes of the property with the consent of the owner*
- Sells the products independently unless otherwise provided for by the legislature
- The owner has the right to withdraw extra equipment or equipment used not in accordance with its designated purpose

Charter of the Unitary enterprise based on the right of economic jurisdiction

- *The charter fund is fully paid* by the owner before the moment of the state registration
- The amount of the charter fund must be not less than **1000 times minimum wage** at the moment of submission the documents for state registration
- If the value of net assets at the end of the fiscal year is less than the amount of the charter fund, the empowered body must reduce the charter fund and the enterprise must notify the creditors thereof.
- UE can set up a subsidiary by transferring a part of the property in its economic jurisdiction

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Associations of legal entities (Associations, Unions) <i>art. 121</i>	
Legal entity or not	Yes
Company name	The name includes an indication of the principal subject of its activity, and also the words “union” or “association”
Purpose of creation	Organization created by agreement for defending common interests and coordinating entrepreneurial activity
Founders	Legal entities (commercial and noncommercial) retaining independence and the rights of a legal entity
Responsibility of association	Не отвечает по обязательствам членов, члены отвечают в порядке, определенном в учредительных документах
Entrepreneurial activity	If necessary the association is transformed into an ES (EP) or sets up an ES for these purposes
Founding documents	Founding agreement, charter <u>Structure:</u> <ul style="list-style-type: none"> • name • address • management procedures, composition and powers of management bodies • procedure for taking decisions • information on the distribution of property after liquidation of the association
Rights of the members	<ul style="list-style-type: none"> • use the services of the association free of charge
Withdrawal (expulsion)	<ul style="list-style-type: none"> • the member of an association has the right to withdraw at the end of the fiscal year • the member of an association can be expelled by decision of the participants as established by the founding documents • the withdrawing (expelled) member of an association bears subsidiary responsibility for the liabilities of the association for two years after his/her withdrawal

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Foundations <i>art. 118-119</i>	
Legal entity or not	Yes
Purpose of creation	Organization without membership, founded by citizens on the basis of voluntary contributions, pursuing socially-useful purposes
Founders	Citizens, legal entities
Responsibility of the founders	The founders are not liable for the liabilities of the foundation, the foundation is not liable for the liabilities of the founders
Entrepreneurial activity	Entrepreneurial activity corresponding to the purpose of the foundation. The foundation has the right to set up an ES or to participate in them.
Property	<ul style="list-style-type: none"> • property transferred to the foundation by the founders is property of the foundation • the foundation publishes annual reports on the use of its property
Charter (<i>approved by the founders</i>)	<u>Charter structure:</u> <ul style="list-style-type: none"> • name of the foundation • address • procedure for the management of the foundation and formation of its bodies (including the trusteeship council) • information on the purpose of the foundation • procedure for appointing and dismissing foundation officials • procedure for distribution of property after liquidation of the foundation
Charter can be amended	<ul style="list-style-type: none"> • by the foundation's bodies, unless otherwise provided for by the charter • by the body empowered to supervise the activity of the foundation • by court decision (in the event of force majeure circumstances)
Liquidation (<i>by court decision only</i>)	<ul style="list-style-type: none"> • if the property of the foundation is insufficient to effectuate its purposes • if the purposes cannot be achieved nor amended • if the foundation evades the purposes provided for in the charter • in other instances provided for by law

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

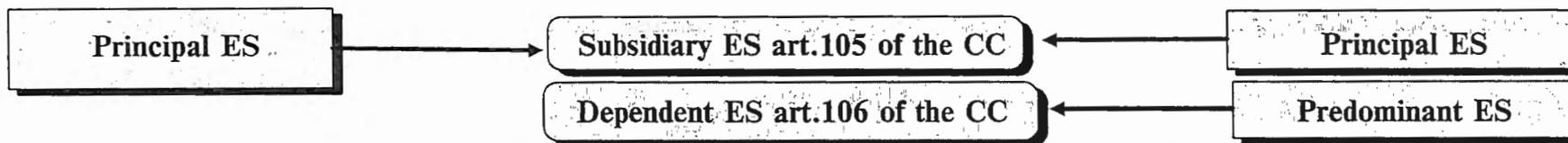
Institutions <i>art. 120</i>	
Legal entity or not	Yes
Purpose of creation	Management, socio-cultural and other functions of a noncommercial character
Founders	Owner of the property
Responsibility of an institution	Liable with its cash assets, in the event of their insufficiency the owner of the property bears subsidiary responsibility
Entrepreneurial activity	The institution owns, uses and disposes of property in accordance with the purpose of its activity and tasks assigned by the owner.
<ul style="list-style-type: none"> • The owner has the right to withdraw extra property or property which is used not according to the purpose 	

Legal entities and other organizational forms according to the Civil Code of the Russian Federation

Non-government and religious organizations <i>art. 117</i> <i>(noncommercial organizations)</i>	
Legal entity or not	Yes
Property	Property and membership dues become property of the organization
Purpose of creation	Voluntary association of citizens on the basis of community of interests for the purpose of satisfying spiritual and other nonmaterial requirements
Participants	Citizens
Responsibility of participants	Participants are not liable for the liabilities of the organization, the organization is not liable for the liabilities of its participants
Entrepreneurial activity	Entrepreneurial activity only for the purpose for which the organization was created
<ul style="list-style-type: none"> • The participants do not retain rights to property transferred in the ownership of the organization, including membership dues 	

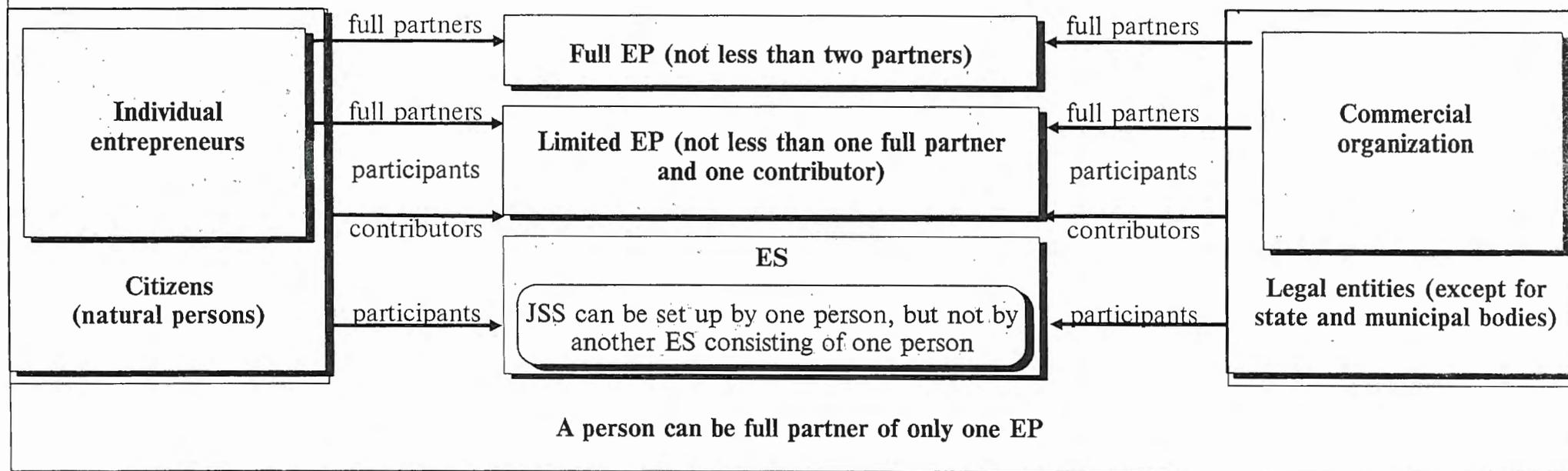
Subsidiary and dependent economic societies (ES)
art. 105, 106 of the CC

Subsidiary (dependent) ES - a society is deemed a subsidiary if another (*principal*) economic society or partnership has the possibility to determine the decisions adopted by that society



Subsidiary ES	Dependent ES
<ul style="list-style-type: none"> • An ES is deemed subsidiary if another (principal) ES has a possibility to determine the decisions taken by that ES • Subsidiary ES is not liable for the debts of the principal ES. The principal ES is liable for the transactions concluded by the subsidiary ES by instructions of the principal ES • In the event of the bankruptcy of the subsidiary ES through the fault of the principal ES, the latter bears subsidiary responsibility for its debts • Participants (stockholders) of the subsidiary ES have the right to demand compensation by the principal ES for losses caused through its fault 	<ul style="list-style-type: none"> • An ES is deemed dependent if another (predominant) ES has more than 20% of the voting stocks of a joint-stock society, or more than 20% of the charter capital of a limited responsibility society • An ES that has become predominant is obliged immediately to publish information concerning itself

Participants of EP (ES)



Company name

art. 69, 82, 87, 95, 96

Types of leg.ent.		Elements of the name	
EP	Full	"Full partnership"	Names of all full partners or one or several of them, and also the words "and company"
	Limited	"Limited partnership" ("Kommandit partnership")	
ES	JSS	Indication that it is a joint-stock society	Name
	LR ES	"Limited responsibility"	
	AR ES	"With additional responsibility"	

**Responsibility of participants
Charter (joint) capital**

Types of legal entities	Responsibility of participants	Charter (joint) capital
Full EP	<i>Full partners</i> engage in entrepreneurial activity on behalf of the EP and <i>bear personal liability</i>	Joint capital is divided into shares (contributions)
Limited EP	<i>Full partners</i> engage in entrepreneurial activity on behalf of the EP and <i>bear personal liability</i> <i>Contributors</i> do not engage in entrepreneurial activity and bear the risk of losses within the limits of their contributions	<i>In the event the value of net assets of an EP becomes smaller than the joint capital, profit is not distributed until they become equal</i>
Joint-stock society (JSS)	Participants do not bear responsibility for the liabilities of the society and bear the risk of losses within the limit of the value of their stocks (contributions)	Charter capital is divided into a certain number of shares <div style="border: 2px solid black; border-radius: 15px; padding: 5px; text-align: center;">Stocks can be issued by the JSS only</div>
ES with limited responsibility	Participants do not bear responsibility for the liabilities of the society and bear the risk of losses within the limit of the value of their contributions	Charter capital is divided into shares (contributions) of specified value
ES with additional responsibility	Participants bear equal <i>subsidiary responsibility</i> for the liabilities of the ES in the amount proportionate to the value of their contribution	Charter capital is divided into shares (contributions) of specified value

Economic societies (ES)

Charter capital of the society with limited (additional) responsibility	
Charter capital composition	Charter capital consists of the contributions of the participants <div style="border: 1px solid black; padding: 5px; text-align: center;"><i>The participant cannot be excused from making a contribution to the ES</i></div>
Charter capital contribution	<ul style="list-style-type: none"> • At the moment of registration of the ES at least 50% of the charter capital must be paid up • The balance must be paid during the period of one year <div style="border: 1px solid black; padding: 5px; text-align: center;"><i>In the event of this violation of provision the ES must reduce the amount of the charter capital or be liquidated</i></div>
Reducing charter capital	Only upon notification of creditors who can demand coverage of losses
Increasing charter capital	Only after all the participants pay 100% of their contributions
Charter capital amount	<ul style="list-style-type: none"> • At the end of each fiscal year the value of net assets should not be less than the charter capital. In the event it is less than the charter capital: <ul style="list-style-type: none"> — ES must reduce the amount of the charter capital — in the event it is less than the minimum amount established by law - the ES must be liquidated
External audit	Can be carried out: <ul style="list-style-type: none"> — annually during the check of accounting procedures — at the request of any of participants

Economic partnerships (EP)

Management of EP <i>art. 71, 84, 91, 103 of the CC</i>	
Full EP	<ul style="list-style-type: none"> • General consent of all the participants • One participant - one vote
Limited EP	<ul style="list-style-type: none"> • EP are managed by <i>full partners</i> • <i>Contributors</i> do not have the right to manage the EP and to contest the actions of full partners • Contributors can act on behalf of the EP provided they are duly authorized to do so • In the event of liquidation of an ES, including bankruptcy, contributors have preferential rights to receive their contributions after the settlement with the creditors

Management bodies (LRP,ARP,JSC)**GENERAL MEETING**

of participants (members)
- *highest management body*

Exclusive competence of the general meeting:

- ⇒ amending the charter, changing the amount of the charter capital
- ⇒ forming executive bodies (unless it is the competence of the Board of Directors), terminating their powers ahead of schedule
- ⇒ approving annual reports and balance sheets, distribution of profits and losses
- ⇒ electing the auditing commission (auditor)
- ⇒ electing the Board of Directors (Advisory Council)
- ⇒ taking the decision on reorganization and liquidation

**BOARD OF DIRECTORS (not more than 50 members)**

(ADVISORY COUNCIL)

Exclusive competence - *provided for by the charter*

**EXECUTIVE BODY**

(collegial or individual)

- *operative management*

Rights and duties of participants (EP and ES) <i>art. 71, 84, 91, 103 of the CC</i>	
Rights	Duties
<ul style="list-style-type: none"> • Participate in the management (except for contributors and holders of privileged shares in JSS) • Obtain information concerning the activity of the EP (ES) • Take part in the distribution of profit • Receive the part of the property remaining after the settlement with the creditor in the event of liquidation of EP (ES) <div style="border: 1px solid black; border-radius: 15px; padding: 5px; margin-top: 10px;"> <p><i>In the event of liquidation of the Limited EP the contributors have the preferential right to receive their contributions</i></p> </div>	<ul style="list-style-type: none"> • Make contributions stipulated by the founding documents • Participants of EP must contribute not less than 50% of their contribution at the moment of registration, others - as provided for by the founding agreement <div style="border: 1px solid black; border-radius: 15px; padding: 5px; margin-top: 10px;"> <p><i>In the event of violation the participant contributes 10% interest of the outstanding part of the contribution and covers losses</i></p> </div> <ul style="list-style-type: none"> • Do not divulge confidential information about the EP (ES)

Withdrawal of participants of EP (ES)*art. 71-79, 93, 94 of the CC*

	Economic partnership		Society with limited (additional) responsibility
	full partners	contributors	
The right to withdraw from EP (ES)	In the event EP is set up for an unspecified term - declare withdrawal 6 months in advance	At the end of the fiscal year	Any time irrespective of the consent of other participants
	In the event EP is set up for a specified term - for well-grounded reasons only		
Inheriting the share (right of succession for legal entities)	The withdrawing participant (heir, who did not join the EP) is paid the share according to the balance at the moment of withdrawal		The withdrawing participant - in the order established by the charter
Right to transfer the share	To another participant or third person with the consent of other participants	To another participant or third person	To another (or several) participant . They have the preferential right. To third persons unless prohibited by the charter.

5.3.3. Preparation of Founding Documents for New Agricultural Enterprises

After the founders have selected a definite organizational and legal form, founding documents need to be drafted.

The founding documents should comply with the Russian legislation in both format and substance.

All founding documents must show the name of the legal entity, its address, its management structure, and other pertinent information required by law for that particular type of legal entity.

5.3.3.a. Founders' Agreement

In the founders' agreement, the founders determine the nature of their joint activity and participation in its business activities, and the terms and conditions upon which property will be contributed to the legal entity. The agreement also sets forth the conditions and manner in which profits and losses will be shared by the founders, the management of the legal entity, and provisions for withdrawal of founders from the legal entity.

The founders' agreement must contain the following:

- The founders' (founding organizations') names and legal status.
- The founders' addresses and passport number if they are persons, or government registration number, in the case of legal entities.
- The amount of charter capital.
- The number of shares or ownership interests belonging to each founder.
- The size and manner in which investment will be made (payment for stock in the case of a joint stock company)

5.3.3.b. The Enterprise Charter

The charter of an organization must contain:

- A statement of the type of legal/organizational form
- The name of the legal entity
- The address
- The amount of charter capital
- The membership, method of election and authority of the management and control structure
- The manner in which profits and other funds will be distributed
- Provisions concerning the reorganization and/or liquidation of the organization.

Governmental and municipal organizations, as well as non-commercial organizations that have the right to carry on entrepreneurial activity, are required to show in their charters the nature of their activities (Refer to Tables 34,35).

The size of the charter capital of a joint stock company, enterprises with ownership interests owned by foreign investors (joint ventures, regardless of their organizational/legal form) and governmental or municipal enterprises must be more than equal to one thousand (1,000) times the amount of the minimum monthly wage then in force in the Russian Federation on the date the foundation documents are filed for registration. The amount of the charter capital of other organizations must be at least one hundred (100) times the amount of the minimum monthly wage in force in the Russian Federation on the date the foundation documents are filed for registration.

Sample founding documents for different legal forms can be found in Appendix 17.

The attached forms are based on the drafts recommended by Resolution #96 of 2.1.1995. These drafts have been reworked in the light of real life experience of farm reorganization.

The samples are designed on the basis of Recommendations approved by the Resolution of the Government # 96 (February 1, 1995) and were updated with recent experience taken into account.

The sample founders' agreement for a peasant farm is found in Appendix 18.

Table 34

Founding documents <i>art. 52, 70, 83, 89, 98 of the CC</i>					
EP		ES			
Full EP	Limited EP	ES with limited or additional responsibility		JSS	
Founding agreement		Founding agreement (not necessary in the event of one founder)	Charter	Agreement on creation (is not a founding document)	Charter
Signed by all full partners		Signed by the founders	Approved by the founders	Concluded by the founders	Approved by the founders
<p><u>Charter structure:</u></p> <ul style="list-style-type: none"> • name • address • management structure, composition and powers of management bodies • procedure for decision making • amount of contributions and responsibility for failing to contribute them • distribution of profits and losses (as a rule in accordance with labor input) • responsibility of the members for the debts of cooperative 					

Table 35

Information contained in the founding documents				
Name of the legal entity				
Address				
Management (with the consent of all full partners)		Composition and powers of the management bodies, procedure for making decisions		
Amount and composition of joint capital		Amount of the charter capital (of JSS, including JSS with foreign investors - not less than 1000 times min. wage, in other cases - not less than 100 times min. wage) at the moment of submission of documents for registrations		
--	Aggregate amount of contributions			
Size and procedure for changing the size of the shares of full partners		Size of shares of each participant	Category of issued stocks, their nominal value and number	
Amount, composition and deadline for making contributions		<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; border-radius: 15px; padding: 5px; text-align: center;"><i>By full partners</i></div> <div style="border: 1px solid black; border-radius: 15px; padding: 5px; text-align: center;"><i>By participants</i></div> </div>	Procedure for setting up a society	Rights of stockholders
responsibility for observing the rules				

CHAPTER SIX

DISTRIBUTION OF LAND AND PROPERTY

Contents:

- 6.1. Basic Principles
 - 6.2. Land and Property Distribution
 - 6.2.1. Methods of Land and Property Distribution
 - 6.2.2. Stages of Land and Property Distribution
 - 6.2.3. Preparatory Stage of Land and Property Distribution
 - 6.2.3.a. Formation of Land and Property Lots
 - 6.2.3.b. Preparation and Announcement of Lists of Land Plots and Property Units
 - 6.2.3.c. Submission of Bids and Applications
 - 6.2.3.d. Unclaimed Land and Property Shares
 - 6.2.3.e. Necessary Documents
 - 6.2.4. Organization and Conduct of Intra-Farm Auctions
 - 6.2.5. Exchange of Land Plots and Property Units
 - 6.2.6. Transfer of Land Plots
 - 6.2.7. Transfer of Non-Agricultural Land
 - 6.2.8. Actual Transfer of Property
 - 6.2.9. Preparation of the Divisional Balance Sheets
-

6.1. Basic Principles of Land and Property Distribution

During the preparatory stage of reorganization, farm members receive certificates of title to land and property shares but do not take title to specific land plots and property. The actual transfer of land and property occurs only after land and property share owners decide how to use their shares and determine what kinds of enterprises to form.

The aim of land and property distribution is to obtain land plots, buildings, equipment and other property necessary for the economic activities of newly established enterprises and entrepreneurs.

The assigning of land and property to land and property share owners is *restricted to purposes of agricultural production and agricultural sector services*.

Land and property distribution is **one of the key stages of farm reorganization**. The land plots and property acquired as a result of distribution become the basis for the effective functioning of newly created enterprises and peasant farms.

However, it is not uncommon for disputes and conflicts to arise during the process of distribution (e.g. several applicants for the same land plot or piece of property). Such disputes are often settled by farm leaders at their own discretion, thus increasing the likelihood that less informed property and land share owners shall be taken advantage of during the distribution process.

To ensure the fairness of land and property distribution, it is necessary that:

- The process of land and property distribution is clearly understood by each farm member.
- All farm members are fully informed of all activities carried out during the preparation and implementation of land and property distribution.
- Land and property is distributed on the basis of objective factors, such as the number and size of land and property shares at the disposal of share owners and the enterprises they have formed.

These tasks can be accomplished by implementing a far-reaching **information campaign** and choosing the method of land and property distribution most appropriate for the reorganizing farm.

One of the major tasks of the Intra-Farm Reorganization Commission is organizing an effective *information campaign*.

Land and property share owners must be informed of the following items:

- The particular land plots and property units scheduled for distribution;
- Relevant rules and regulations;
- Important dates and deadlines.

6.1.1. Organizing the Distribution of Land and Property

All work related to the organization and implementation of land and property distribution is carried out by the **Intra-Farm Commission on Land Privatization and Farm Reorganization**.

The parties involved in distribution are:

- **agricultural enterprises** created during farm reorganization by farm members who have consolidated their land and property shares on various terms. (Each enterprise must appoint an authorized representative to make decisions and sign protocols of distribution);
- **land and property share owners** who have decided to purchase land and property in order to establish a peasant (individual) farm or to engage in individual entrepreneurial activity.

Land and property distribution is determined **according to the number and value of land and property shares** at the disposal of individual share owners or the enterprises they have formed.

An enterprise may obtain agricultural land, the area of which, measured in hectare-points, corresponds to the sum of all land shares at the enterprise's disposal--whether contributed by the founders to the charter capital, leased to the enterprise, or transferred to the enterprise on other terms.

An enterprise may obtain property, the value of which, measured in share rubles, corresponds to the sum of the property shares at the enterprise's disposal--whether contributed by an enterprise member or transferred to the enterprise on other terms.

Resolutions No. 96 and 874 recommend that land and property distribution be carried out in cases where land and property share owners have decided on the disposal of **more than 95% of land shares and 95% of the property share fund**. The Commission is responsible for ensuring that land and property shares are used in accordance with the applications filed and contracts concluded between share owners and the newly created enterprises.

Land and property may be **distributed on the basis of an agreement, lottery or intra-farm auction**. (Methods of distribution are described in 6.2.1. and 6.2.4.) The main stages of preparation and implementation of land and property distribution are described in Section 6.2.2.

6.2. IMPLEMENTATION OF LAND AND PROPERTY DISTRIBUTION

6.2.1. Methods of Land and Property Distribution

A number of different methods for distributing land and property may be employed by reorganizing farms. Several of these methods are closely regulated by legislation (e.g. auction), while other methods are employed in a manner determined by the General Meeting of the founders of the reorganizing farm, e.g. lottery.

Distribution can be carried out through:

- agreement of participants;
- intra-farm auction;
- lottery;
- tender (*konkurs*);
- combination of the above methods.

6.2.1.a. Selecting an Appropriate Distribution Method

In order to select the appropriate method of land and property distribution, it is necessary to take into account the *particular circumstances on the reorganizing farm*, the likelihood of reaching an out-of-auction agreement, and the prevalence of disputes.

One must also *consider the way in which the farm is to be reorganized*. For example, distributing land and property according to agreement is easier on farms where new enterprises are established on the basis of existing production units, than it is on farms where totally new enterprises are created.

Selection of a distribution method should be made at the General Meeting on the advice of the Reorganization Commission. The members at the General Meeting who have opted to reorganize may vest the Commission with the power to choose the method of land and property distribution. The decision of the Commission and the results of distribution are to be later approved by the General Meeting.

6.2.1.b. Distribution by Agreement

Distribution by agreement takes into account the interests of all participants. Distribution by agreement is a more preferable method of distribution because it entails a rational choice of production facilities, rational and full distribution of production resources in line with the needs of the new enterprises and persons.

Distribution by agreement is a time-consuming process that requires a careful and responsible approach on the part of the Reorganization Commission.

The Commission is responsible for:

- Analyzing applications and identifying claimants for the same objects.
- Making all applications available to participants for their review.
- Offering options for land and property distribution that take into account both the state of the farm and the goals of the newly created enterprises or peasant farms.
- Assisting the participants to find equitable solutions.

Representatives from the Local Administration, the Department of Agriculture, or the Committee on Land Resources and Land Survey should be invited to take part in negotiations in order to clarify issues, assist in reaching compromises, and facilitate the settlement of disputes. It is recommended that the Commission carry out final discussions and take decisions at open sessions, where all the interested persons, specialists and all those willing to take part may participate. The results of the negotiations must be documented by appropriate protocols.

During negotiations, the goal of the Commission is to ensure the effectiveness of future agricultural enterprises, peasant farms, or entrepreneurs, without violating the rights of land and property share owners. Thus, it is recommended that the commission first of all make an evaluation of land and property items of fundamental importance for the economic activity of the participants.

Even if agreement is not forthcoming on all issues of property and land distribution, negotiations can be considered to be the first stage in the preparation of the auction as they will minimize disputes and clarify the positions of the bidders.

6.2.1.c. Distribution by Auction

Regulations *On Reforming Agricultural Enterprises* approved by *Resolution No. 874 of the Government of the Russian Federation on July 27, 1994*, recommend that reorganizing agricultural enterprises distribute land and property **by means of an intra-farm auction**, which, in its essence, is a closed event, because only land and property share holders of the reorganizing farm or their representatives are allowed to participate.

Procedures for holding **public sales** to distribute land and property are based on the general norms of civil legislation and, in particular, on the general regulations for holding auctions as provided for by Articles 448 of the Civil Code (1994). Public sales can be organized in the form of an auction or a tender (*konkurs*).

The mechanism for holding intra-farm auctions is well developed and has been tested in the Nizhny Novgorod Oblast. It is described in all the details in the manual

“Land Privatization and Farm Reorganization in Russia” produced by the International Finance Corporation.

However, in most cases, farms are reluctant to hold auctions, and often prefer to distribute land and property by simpler means -- in particular, by agreement. Distribution on the basis of agreement is not only easier than holding an auction. It also precludes the necessity of training the bidders and making the sometimes demanding preparations for an auction.

In view of the above, *we recommend that an auction be held if there is more than one bidder for the same land plot or piece of property*, and the bidders fail to reach agreement. An auction is a fair mechanism for settling such disputes (Section 6.2.4.).

6.2.1.d. Distribution by Lottery

Although the lottery offers a seemingly simple means of distributing land and property, this method often necessitates the exchange of land plots and equipment acquired (as a result of the lottery) for the land and property the enterprise needs to carry out its chosen economic activities. For this reason, *a lottery is more appropriate for distributing similar or identical pieces of equipment or land plots.*

Lottery can be combined with other methods of distribution, particularly in the cases when it was impossible to reach agreement on certain lots.

If the decision is made to carry out a lottery:

- A special commission must be created to monitor the observance of established rules. This commission may consist of the members of the Reorganization Commission, or its members may be elected at the farm meeting at which the decision is made to conduct a lottery;
- It is likely that the objects acquired through the lottery process will be exchanged. Rules should be established for this purpose in advance.

6.2.1.e. Distribution by Tender (*Konkurs*)

The winner of a tender is not the highest bidder, as at an auction, but the party who offers the best terms. For instance, a group of workers wishing to acquire a farm submits to the organizers of the tender their proposals regarding the farm's future activity and economic relations with other structural units of the farm.

The total value of property and total area of land acquired through a tender must not exceed the total land and property shares available to the new organization. This also holds true for other methods of land and property distribution.

6.2.1.f. Combination of Different Methods

Experience shows that land and property distribution may be carried through a combination of different methods. For example, farm members taking part in an

inter-farm auction may work out agreements beforehand in order to minimize disputes.

Distribution by agreement may be followed by an auction, lottery or konkurs for the objects that could not be distributed by agreement.

6.2.2. Main Stages of Land and Property Distribution

Whichever method of distribution is selected, preparation and implementation of the distribution process consists of a number of stages aimed at achieving the following goals:

- Ensuring that each owner has an equal opportunity to participate in property and land distribution;
- Making the process open and devoid of any abuse;
- Documenting the results of land and property distribution.

Resolution No. 874 details a number of activities regulating the preparation and conduct of an auction.

Some of these activities are also applicable to other means of distribution.

Land and property distribution consists of the following stages.

6.2.2.a. Preparatory Stage

This preparatory stage may be broken down into the following activities:

- *Preparation of lists of land plots and property units* to be offered to land and property share owners (plots and units may be called lots as in auctions).

The land and property of the reorganizing farm is divided into lots that can be used effectively for the chosen economic activities of the newly formed enterprises.

In forming land lots, farms usually use the existing system of land division according to fields and plots. Land plots separated by roads and by other natural and artificial boundaries usually form different lots.

In forming property lots, the main assets of the farm scheduled for distribution are divided into integral production units, each of which is capable of functioning independently. These units (lots) may consist of one object (e.g. a tractor.) or a group of objects (e.g. a dairy farm with equipment, livestock and production infrastructure).

Distribution of Land and Property of Reorganizing Farm

Preparatory Stage

Making up of lists of land plots and property units

Preparation of land and property lot descriptions

Announcement of lists of land and property units

Announcement of time and rules for land and property distribution

Collection and registration of applications

Preparation of the package of documents for distribution

Main Stage

Land and Property Distribution Activities

Final Stage

Exchange of land plots and property units

Land survey

Issuance of certificates of land ownership

Distribution of non-agricultural land

Actual transfer of property units

Preparation of the divisional balance sheet

Lots are formed by the Intra-Farm Commission on Land Privatization and Farm Reorganization.

During the process of lot formation, the Commission should take into account the specific circumstances on the farm so as to encourage the effective functioning of the new enterprises and minimize the number of disputes that might arise.

In settling issues of land and property distribution, it is necessary to first consider how the new enterprises intend to organize their economic activities. For example, if there are to be items/facilities for the common use of the new enterprises (repair shops, grain storage etc.), then the new enterprises should arrange for the joint purchase of common use items prior to the distribution process. Therefore, if there are to be items for common use, then prior to lot formation it is necessary to take appropriate measures to form *an indivisible fund for common use*.

Recommendations on lot formation are described in detail in Section 6.2.3.a.

- **Preparation of descriptions of each land or property lot (6.2.3.b.)**

Lists and descriptions of lots are made according to the results of the inventory conducted during farm reorganization, and specify the actual status and value of lots. Only units available for distribution shall be included in the list. If a lot consists of encumbered property (debts that must be paid before acquisition, collateral or lease), the liabilities must be specified in the list of lots.

- **Announcement of land plots and property units** subject to distribution - - to be accompanied with maps specifying plot boundaries (Section 6.2.3.b.).
- **Notice to land and property share owners of:** the rules of land and property distribution; date of land and property distribution; the deadline for filing application to the Intra-Farm Reorganization Commission for land and property; the availability of application forms (Section 6.2.3.b).
- **Collection and registration of applications** for land plots and property units (Section 6.3.3.b.).

Applications may be filed by: new entities created on the basis of the reorganizing farm and by land and property share owners who have decided to set up a peasant farm or engage in entrepreneurial activity. The applications are verified, updated and registered by the Commission. The applicants for land and property can read each other's applications and update their own applications if they find it necessary.

- Settling issues of unclaimed land and property shares (Section 6.2.3.d)
- Preparation of documents necessary for land and property distribution.

6.2.2.b. Main Stage

This is the stage in which land and property are distributed among new enterprises and individual owners in accordance with the method selected.

- If the Commission believes that land and property can be distributed **by agreement**, it may organize discussions and negotiations among the applicants in order to settle disputes and reach an agreement.
- If there is a significant number of disputes, and several applications have been filed for the same land plots or pieces of property and an agreement cannot be reached, it is recommended that land and property be distributed by means of an intra-farm auction.

Organization of an auction and rules of its conduct are described in Section 6.2.4; auctions must be carried out in compliance with the *Rules of Intra-Farm Auctions for Distribution of Land and Property*, approved by Resolution No. 874 of the Government of the Russian Federation, (27 July, 1994).

- Irrespective of the distribution method, by agreement or auction, results are documented by **special protocols** and signed by the members and chair of the Commission and a representative of the Raion Administration. These protocols are the basis for the issuance of documents certifying the rights of new owners to the appropriate land plots and property.
- After distribution is completed, it is recommended that a public forum be organized: either a meeting of the participants or a General Meeting of the farm. Representatives of the Raion Administration, the Department of Agriculture, the Committee on Land Resources and Land Survey, the State Property Committee, and all those who want to attend these meetings should be invited. The results of land and property distribution are announced at this meeting.

6.2.2.c. Final Stage

During the final stage of land and property distribution, the following events take place:

- Land plots and property acquired during the process of distribution are exchanged, and the transactions are duly documented (Section 6.2.5);
- A land survey is carried out, if necessary, and new owners are issued certificates for the land plots they obtained as a result of land and property distribution (Section 6.2.6.);

- Non-agricultural land used by the reorganized farm is distributed between the newly formed enterprises (Section 6.2.7.);
- Actual transfer of property to the new owners takes place (Section 6.2.8.);
- A divisional balance sheet is prepared and submitted along with founding documents for the registration of the newly formed enterprises (Section 6.2.9.).

6.2.3. Preparatory Stage of Land and Property Distribution

6.2.3.a. Formation of Land and Property Lots

However efficiently the process of land and property distribution is organized, the fairness of distribution and the viability of newly organized enterprises will largely depend on preparatory work. Thorough organizational work preceding land and property distribution leads to a conflict-free distribution process, and often allows distribution of land and property by agreement without a long and complicated auction procedure.

For the above reasons, *the following tasks are especially important* during the preparatory stage of farm reorganization:

- Thorough and accurate land and property inventories;
- Consolidation of land and property shares into new enterprises. The public will have access to information regarding: a) the amount of land and property shares available to each enterprise, and b) a list of farm members willing to establish his own farm or embark upon individual labor activity;
- A combination of land plots and property units into integral units that appeal to the management of the newly created enterprises (these units may comprise one or several property objects).

These land plots and integrated production units are called "lots", as at an auction.

Principles of Lot Formation

Whichever procedure for the distribution of farm land and property has been chosen (lottery, auction, or distribution by agreement), *the following main principles should be applied* to the preparation of lists of land plots and property units:

- During the formation of land lots, only those land lots owned by the farm may be distributed. As to the formation of property lots, only units belonging to the property share fund may be distributed (refer to

Section 4.2.6.). The so-called *indivisible fund*, formed of auxiliary units and services, may be formed within the property fund but is not to be divided into lots. *Farms may employ a number of different methods in order to transfer the indivisible fund into common property or common use.*

- Lots should be prepared so that each land plot or each group of property objects forms the basis for, or becomes an independent part of, an economic activity of some type.
- Lots should be formed so as to stimulate interest among potential bidders. Lots comprising several objects of no economic value may become a source of disputes in the process of distribution.
- When forming land and property lots, it is advisable to combine separate land plots, or property objects, that are appropriate for the planned structural divisions of the new economic entities.
- The value of land to be distributed should be equivalent to the total amount of hectare-points held by the bidders, and the value of property should be equivalent to the total amount of share rubles held by the bidders.

The Commission is responsible for the formation of land and property lots.

Experience gained in a number of regions across Russia (including Nizhni Novgorod) has made possible the following recommendations, which are based on the rules and procedures contained in Resolution No. 874.

Practical Recommendations on Land Lot Formation

- Land lots should be prepared in compliance with farm land survey maps. It is advisable to avoid the division of fields as this may lead to the disruption of crop rotation and result in diminished crop yields.
- If a crop rotation field consists of several plots, each plot must form a separate lot.
- Land sites separated by roads and other artificial or natural boundaries should form separate lots.
- Land tracts consisting of plots of different *soil quality* should be divided into separate lots.
- Utilities (*irrigation, drainage, etc.*) located on the territory of a land plot comprise a property lot. The party who has purchased such a land plot must purchase the corresponding property lot with his or her share rubles.

- Perennial plants or agricultural work in progress located on the territory of a land plot form separate lots. As in the case with irrigation facilities, the party which has purchased such a land plot must purchase the corresponding property lot with his or her share rubles. If distribution is effectuated by an auction, property lots attached to the land lots are purchased at the starting prices.

Practical Recommendations on Property Lot Formation

Property should be divided into *full production units*. In some cases it is not a problem to separate fixed and current assets and to form separate lots, but in some cases it is neither easy nor reasonable to do so. If a fixed assets unit cannot function without attached current assets, the fixed and current assets should form one lot. The lack of a developed market for agricultural inputs often necessitates the need for this measure. With the development of a market oriented infrastructure the necessity to unite fixed and current assets into one lot may one day be eliminated. Property lots should be formed according to property type.

Fixed Assets are grouped by types as follows:

- ***Cattle farms.*** Cattle farms may be divided into lots consisting of buildings, equipment, livestock, auxiliary facilities (silo trenches, warehouses, fodder barns) used solely or mainly by the given farm; roads and other production infrastructure.

The Commission may choose to include some cattle into a separate lot that can be used for independent economic activity.

The Commission may also choose to include some fodder into the lot (an example of combining fixed and current assets).

- ***Agricultural machinery.*** Each tractor, car, combine harvester or other agricultural machinery should form an integral lot.

Stationary agricultural machinery, or machinery that can only be used with a particular automobile, tractor or combine harvester should be placed in one lot with the corresponding vehicle.

The Commission may choose to include some amount of gas and lubricants, thus uniting fixed and current assets in one lot.

Garages for cars, trucks, and agricultural equipment. Garages should form separate lots. They should not be combined with other fixed or current assets, since garages may be used for purposes other than agricultural production.

- ***Repair shops.*** Repair shops, produce-processing facilities, and auxiliary facilities should form separate lots that may include buildings, plants, equipment and materials needed for production (current assets).

- **Threshing floors and drying rooms.** All equipment installed in these types of facilities, including current assets, should be combined into one lot.
- **Warehouses, sheds and oil depots** should form separate lots - without their contents - as they can be used not only for their primary function but may be converted into repair shops, plants, etc. The Commission may, however, choose to form lots which combine these types of assets that include current assets.
- **Administrative buildings.** Each building, together with equipment and furniture, should form one lot.
- **Productive livestock** or a part thereof.

Current assets are grouped by type as follows:

Current assets (with the exception of those enumerated above and combined with fixed assets) form separate lots according to type:

- Agricultural produce (separately for each description);
- Spare parts and accessories (by type);
- Fodder (by type);
- Seeds (by culture and quality);
- Fertilizers (by type of fertilizers);
- Plant protection preparations (by type);
- Fuel (gasoline and diesel fuel separately);
- Building materials (by type and description).

In some cases the Commission may decide that current assets of the same type (wheat seed, for example) should form several lots; thus allowing all the newly formed enterprises the use of such property.

6.2.3.b Preparation and Announcement of Lists of Land Plots and Property Units

Preparation of Lists of Land and Property Lots

All land and property lots should be described and numbered in lists. If certain property lots are attached to land lots (as in the case with land improvement facilities, perennial plants, or agricultural work in progress), this information must be specified in the list of property lots and in the list of land lots with corresponding numbers.

Each lot must have a full description as follows:

- **For land lots:** the number of hectares, type of land, location; evaluation in hectare-points;

- **For property lots:** the type of property, state and farm numbers, location, and physical condition. In cases where one lot comprises several property objects, a description should be given of each object.

A complete financial statement, including financial/economic benefits and shortcomings of the given land site or group of property objects (such as land improvement facilities, accounts receivable or accounts payable) should be specified in the lists.

Announcement of Lists for Land Plots and Property Units

The Intra-Farm Reorganization Commission is required to make the following information public:

- *A list of land plots* scheduled for distribution, including their description.
- *A map* that illustrates the boundaries of the land plots subject to distribution. (The recommended scale is 1:10 000 or greater.)
- *A list of property units* subject to distribution (fixed and current assets).

The Commission must disseminate the above information among all potential participants in the land and property distribution process *at least three weeks prior to the deadline for filing applications*.

In addition, the Commission must inform land and property share owners of:

- *the procedures* for land and property distribution;
- *scheduled dates of land and property distribution* (including dates and rules of auctions);
- *deadlines and procedures for filing applications* for land and property;
- *dates of auction training sessions* for the bidders if an auction is scheduled.

6.2.3.c. Submission of Bids and Applications

Prior to distribution of land and property, bids and applications must be submitted by the newly established agricultural enterprises formed on the basis of the reorganizing farm and by private persons holding land and property shares who wish to organize individual (peasant) farms or to engage in some other type of individual entrepreneurial activity. Bids are filed for participation in the land and property distribution procedures

- for land plots,
- for property units.

The Intra-farm Commission for Privatization of Land and Farm Reorganization is to endorse **the type of application** to be used. A recommended form for applications can be found in Appendix 20.

Applications should include the following information:

- Name of the enterprise;
- Legal form;
- Proposed type of activity;
- Number of hectare-points and share rubles available to the enterprise or individual farmer;
- Land plots the filing party wishes to acquire, including the number(s) in the announced list of land sites, area in hectares and evaluation in hectare-points;
- Property lots the filing party wishes to acquire, including the number(s) in the list of property lots, the state registration and inventory numbers, the location and price in share rubles;
- Signature of the filing party (the head of the individual peasant farm or the individual entrepreneur).

- Land sites and property are to be enumerated in the applications **in strict accordance with the previously announced and recorded lists.**
- In completing an application, applicants should take into consideration the following:
 - As a rule, applicants bid for entire lots. If an applicant does not have a sufficient number of hectare-points for purchase of an entire land lot, he may bid on a part of it.
 - Applications cannot be made for one part of an entire fixed assets lot.
 - Applications can be made for part of a current assets lot.

Prior to land and property distribution, applicants are strongly advised to check the financial status of property on which they are bidding. The Commission is obligated to provide bidders with this information.

- The Intra-Farm Reorganization Commission is responsible for verifying and registering each application.

The Commission must ***check available documents*** to certify that the party filing the application has legitimately accumulated the land and property shares and attendant rights as listed in the application. Documents to be checked include land share lease agreements; founding agreements; all gift, purchase and sale agreements; and deeds.

Each application for land and property *must be verified for accuracy* in order to ensure that the number of land sites and the property listed by applicants in their applications equals the amount of land and property designated for distribution. Prior to land and property distribution, the Commission must confirm that the value of land and property applied for does not exceed the number of hectare-points and share rubles available to the applicant.

- The Commission must *accept and register applications one or two weeks* prior to the land and property distribution procedure. Prior to the deadline, applicants have the right to review other applications and may at their discretion modify their own applications.

6.2.3.d. Unclaimed Land and Property Shares

Before commencing land and property distribution, the Commission must decide what to do with unclaimed land and property shares.

Land shares are deemed unclaimed when:

- persons entitled to land shares fail to receive certificates within the time period established by the Commission;
- owners who have received certificates fail to make a decision on how to dispose of them.

Similarly, property shares are deemed unclaimed when:

- persons entitled to property shares fail to receive property share certificates or other documents explaining their rights to property entitlement, within the time period established by the Commission.
- owners who have received property share certificates fail to make a decision on how to dispose of them.

If the total unclaimed land shares comprise more than 5% of all shares and/or the value of unclaimed property shares exceeds 5% of the total property share fund, the Commission may *postpone the deadline* by which share owners must decide on how to dispose of their shares.

Upon the decision of the Commission, unclaimed land and property shares can be transferred to new agricultural commercial enterprises (with their consent), whereupon these enterprises become representatives with respect to the shares in compliance with Article 182 of the Civil Code of the Russian Federation.

Transfer of the same land or property share to several agricultural commercial enterprises is not allowed.

If an agricultural enterprise refuses to accept unclaimed shares, the unclaimed shares are transferred to the Raion Land Redistribution Fund.

Taxes and other obligatory payments for unclaimed shares must be paid by the agricultural enterprises to which the unclaimed shares are transferred.

The agricultural enterprise, to which unclaimed land and property shares are transferred is liable for all claims that the owners of these shares may file regarding their use. The statute of limitations for such claims established by legislation of the Russian Federation is three years.

6.2.3.e. Necessary Documents

The Commission must prepare a full package of necessary documents at least one week before land and property distribution.

The recommended forms of these documents are similar to those recommended for the preparation of intra-farm auctions (Section 6.2.4 c) and may be found in Appendix 21. Documents necessary solely for the organization and holding of auctions are excluded from this package.

The Commission is responsible for informing all applicants about the date and venue of the land and property distribution.

6.2.4. Organization and Holding Intra-Farm Auctions

An auction is an effective mechanism for open distribution of land and property and settlement of disputes.

The organization and holding of intra-farm auctions are regulated by *Resolution No. 874 of the Government of the Russian Federation on Reforming Agricultural Enterprises (July 27, 1994) and Rules of Intra-Farm Auctions endorsed by Appendix I to the Regulations*. This section describes the organization and holding of auctions in accordance with this Resolution.

Auctions are organized by Intra-Farm Commissions for Privatization of Land and Farm Reorganization.

Some important points on auctions:

- Land and property can only be purchased at an auction for the purpose of establishing (or expanding) an agricultural enterprise, establishing (or expanding) an enterprise that services the agricultural sector, or for engaging in individual entrepreneurial activity;
- Participation in auctions is open solely to holders of hectare-points and share rubles on the reorganizing enterprise and to the representatives of such holders;
- In order to participate in the auction, legal entities or holders of land and property shares must submit bid applications;
- Land and property are to be listed by applicants in their bid applications in accordance with the lists of land and property lots into which the Commission has divided the reorganizing farm land and property;

- The legal tender in land auctions is hectare-points, whereas the legal tender in property auctions is share rubles;
- The value of property to be distributed must equal the total amount of share rubles held by the bidders according to their certificates of property share title;
- The value of land to be distributed must equal the total amount of hectare-points held by the bidders according to their certificates of land share title.

6.2.4.a. Organization of Intra-farm Auctions

Intra-farm auctions are organized in accordance with the procedures described in Section 6.2.3 and consist of the following steps:

- **Formation of the land and property lots to be sold and the preparation of lot descriptions.** This step is taken in accordance with the Rules of Intra-Farm Auctions endorsed by the Resolution of the Government of the Russian Federation No. 874, Appendix 1 (p. 2) (see Section 6.2.3.a.).
- **Announcement of list of land and property lots to be sold** (Section 6.2.3.b.).
- **Notice to all land and property owners** of deadlines and procedures for filing bid applications, the scheduled dates for educational seminars (at which bidders obtain information about the auction procedures), and the rules and date of the auction.
- **Submission and registration of bid applications** (Section 6.2.3.c.).
- **Preparation of documents that must be completed and processed in order for the auction to take place** (Section 6.2.4 c). *This set of auction documents shall be endorsed by the Commission and presented to the Raion Administration no later than one week prior to the auction.*

Immediately before the auction each bidder is served ***an official notice of acceptance of his bid application***. The notice also contains the time and place of the auction, rules of the auction, a list of bidders with auction numbers and funds available to each, and a list of land and property lots by rounds with bid prices for each.

Training of bidders

Because auction rules are rather complicated, training bidders constitutes an important part of organizing and holding an auction.

For this purpose a *mock auction* is organized during which the auction rules, possible situations, options and solutions are discussed and explained. During the mock auction bidders can analyze all the documents prepared for the auction, learn how to correctly fill in their bid applications and post-auction applications, and keep track of the sold lots.

An educational campaign in the form of a mock auction helps each bidder to correctly distribute his share rubles and hectare-points and to avoid possible conflicts during the auction.

It is advisable to prepare two copies of all bids - one for each bidder, and a whole set for the auctioneer. All bidders, leaders of new enterprises, the auctioneer, and his assistant should have copies of the protocols for the mock auction.

Special attention should be paid to rules and procedures that are difficult to understand.

During the mock auction it is particularly important to discuss and explain issues regarding land plots and property units that are either encumbered with liabilities or coupled with agricultural work in progress (such as plowing or sowing carried out on the given plot). Prior to the auction the bidder should know whether the land plot or item of property included in a lot is encumbered with obligations or coupled with agricultural work in progress. According to the auction rules the agricultural work-in progress must be evaluated in share rubles and shall be deducted from the winning bidder's supply of share rubles.

Practice shows that bidders often do not understand why purchasing with hectare points a land plot with agricultural work in progress diminishes the amount of share rubles available to them during property auction. One of the tasks of the mock auction is to explain to each bidder that buying a land plot that is coupled with work-in progress will reduce the amount of share rubles available to him for use during the property auction.

6.2.4.b Main Rules of Intra-Farm Auctions

- The auction is held publicly and is attended by the following persons:
 - Bidders and their representatives;
 - The Chairman of the Commission or the authorized representative of the Chairman;
 - The auctioneer (who shall not hold any share in land or property of the enterprise);
 - Assistant auctioneers and secretaries;
 - A representative of the Raion Administration.

- Each bidder may be represented by several persons of whom *only one shall be authorized to make decisions at the auction and sign the protocol.*
- The auction begins at the moment the auctioneer announces the auction rules and the bidding increment. The recommended bidding increment must be between one and five percent of the previous bid.
- For any given item to be bid on during the auction the auctioneer announces the number of the lot, a lot description, the initial price and the number of bidders for the given lot.
- All purchases of land and property are recorded in the protocol.
- The assistant auctioneer announces the purchasing power (in hectare-points or share rubles) of each bidder after every 20 lots.
- An auction protocol is prepared during the auction and is signed by the auctioneer, the bidders and the Chairman of the Commission.
- *Land and property auctions are to be held separately*, with land auctions preceding property auctions.
- Land and property auctions are held in *three rounds*. In the first round lots for which more than one bid have been submitted are put up for sale. Lots are awarded to the highest bidder.
- In the second round, lots for which only one bid has been submitted are put up for sale. Lots are won at starting prices.
- In the third round, lots for which no bids have been submitted are put up for sale. This round is open to all auction participants who are willing to participate.

Prior to the third round of land or property auctions, the total amount of spent hectare-points and share rubles must be calculated.

Then prices for lots to be put up for sale in the third round are adjusted so that all hectare-points and share rubles are used and all lots are distributed. For land auctions, lot prices are corrected by multiplying all remaining land lot prices by the following *coefficient*:

$$\frac{\text{the total balance of hectare-points held by the bidders}}{\text{the total starting price of the remaining lots}}$$

For property auctions, lot prices are corrected by multiplying all remaining property lot prices by a *coefficient* calculated as the following ratio:

$$\frac{\text{total balance of share rubles held by the bidders}}{\text{total starting prices of the remaining lots.}}$$

- All disputes arising during the auction shall be resolved by the auctioneer. All disputes arising after the auction shall be resolved by the Intra-farm Commission. It is important to establish a deadline after which the Commission will no longer consider claims--for instance, two weeks after the date of the auction.

Land Auction Procedures

- Auction prices are denominated *in points per one hectare*. Proceeding from that price, the price of the land plot or the part of it on which a participant may bid can be calculated.
- *In the first round of the land auction* bidders may bid only on the lots for which more than one bid have been submitted. Lots are awarded to the bidder offering the highest price per hectare.
- At a land auction, a bid may be made on a land lot even if the bidder lacks the sufficient number of hectare-points. If the bidder bids on a land lot without having a sufficient number of hectare-points for purchase of the entire lot at the starting price, the bidder shall communicate his willingness to bid at the beginning of the auction for that lot. Lots are awarded to the highest bidder.

If the bidder who wins a land lot lacks the sufficient number of hectare-points to purchase the entire lot, he or she is awarded part of the lot in hectares proportionate to the balance of hectare-points available to him/her divided by the bid price in points per hectare.

This bidder must use all remaining hectare-points to purchase the lot. This means that each bidder can purchase a partial lot only once during an auction. The remaining part of the lot shall be awarded to another bidder or carried on to the third round.

- *The second round of the land auction* consists of lots for which only one bid application has been submitted. The bidder may win the lot at the starting price or refuse to buy a lot. If bidders refuse to buy a lot, the lot is moved to the third round.
- In the first and second rounds of the auction, bidders may bid only for the lots previously specified in their bid applications; in the third round, all bidders may bid on all lots.
- *The third round of the land auction* consists of lots for which no bid applications were submitted and of lots that were not sold during the first two rounds. Prior to the auction sale of a lot its price is adjusted both in points per hectare and in total points for the lot. For this purpose the total

balance of hectare-points held by all bidders and the total starting price of the remaining lots are calculated.

A coefficient is then calculated consisting of the ratio of the aggregate balance of hectare-points held by all bidders to the aggregate starting prices of all remaining lots. This coefficient is calculated after the sale of each lot.

- Upon completion of the auction for a given lot, the auctioneer announces the lot to be sold, the number of the winning bidder, the buying price in points per hectare and for the whole lot. The winning bidder signs on the indicated line in the protocol.

Property Auction Procedures

- Auction prices are denominated in *share rubles*.
- The auctioning of fixed and current assets are *to be held separately*. The bidding session for current assets should be held between the second and third rounds of the fixed assets auction.
- At the start of the property auction, lots which have land-improvement facilities, perennial plants or agricultural work in progress are transferred to the bidders who were awarded land plots corresponding to these property lots during the land auction (refer to Section 6.3.4.a. on mock auctions). The amount in share rubles bid for these lots is deducted from the amount of share rubles available to the given bidders.
- ***The first round of the property auction***, during which fixed assets are put up for bid, consists of lots for which two or more bid applications have been submitted.
- ***The second round of the property auction*** consists of fixed assets lots for which only one bid application has been filed. Lots are won by the parties who have filed their bid applications at the starting price in share rubles. In the absence of bidders willing to buy a lot, the lot shall be carried over to the third round.

In the interim round for the auctioning of current assets, only those bidders who have filed bid applications for a given lot may bid on that lot. The bid price for current assets is denominated in share rubles per unit of property (grain, potatoes, gasoline, etc.).

The unsold surplus shall be carried over to the third round.

- ***In the third round*** of the auction both fixed assets and current assets are put up for sale. Lots for which no bids have been submitted are followed by lots carried over from previous rounds. The third round is open to all those willing to participate in it. Prior to the sale of each lot, the auctioneer shall announce the initial price, the price reduction, and the new price. The price

reduction factor is calculated as the ratio of the total balance of share rubles held by bidders to the aggregate value of remaining fixed and current assets at starting prices. Both are communicated to the bidders each time the factor changes. The price of each lot is calculated by multiplying the initial price by the factor. The lot is awarded to the highest bidder.

- The third round continues until either all lots have been sold, all bidders have used up all their share rubles, or until bidders refuse to bid while still holding share rubles.
- It is recommended that the third round of the auction finish with the sale of a lot consisting of divisible current assets (potatoes, grain, etc.). In that case, the balance of the lot can be distributed among bidders proportionally to their share ruble holdings:
- If the balance of the share rubles held by individual bidders is not sufficient to buy the fixed assets lot, then share rubles may be combined in order to purchase the lot. This purchased item will be the common share property of the bidders who won it.
- If at the end of the third round there are still bidders who hold share rubles and there are still unsold lots for which no one will bid, the auctioneer must warn the bidders that their share rubles are on the verge of being wasted, the bidding process about to end, and the unsold lots scheduled for transfer to the Commission to be sold or written off.
- If less than 90 percent of fixed assets are sold during the first two rounds it may be reasonable to hold the current assets auction after the third round. In this case only fixed assets not sold in the third round will be put up for sale.
- Upon the completion of the auction for a given lot the auctioneer records in the auction protocol the name of the winning bidder and the buying price. The winning bidder then signs in the protocol. The auction protocol is the official document for the transfer of property to the new owner.

6.2.4.c. Documents for Intra-Farm Auctions

A set of model documents for holding intra-farm auctions to distribute land and property during farm reorganization was endorsed by the Resolution of the Government of the RF, No 874, (27 July 1994).

Forms of documents for holding intra-farm auctions may be found in Appendix 21.

These documents are prepared by the Intra-farm Commission for Land Privatization and Farm Reorganization.

Documents Prepared Prior To The Auction:

1. Lists of land and property lots

Lists of land and property lots are prepared separately for each round of land and property auction. Lots are enumerated in the lists according to the order in which they will be put up for sale in each round. Experience shows that it is advisable to indicate the number of each bidder who has submitted a bid for a lot. Lists of lots are submitted to each bidder, the auctioneer, and his assistant.

2. Statement of purchasing power of land share titles

The valuation in hectare-points of each land lot (land site) put up for sale at the auction and the number of certificates of land share title issued at the date when the certificates were first issued, and immediately prior to the auction, are included into this statement. The purchasing power of each certificate is then calculated as the ratio of the total amount of hectare-points held by the owners to the number of certificates.

3. Statement of purchasing power coefficient of share rubles

The purchasing power coefficient of share rubles is calculated as the ratio of the value of all lots put up for sale at the auctions of fixed and current assets (in thousands of rubles) to the total amount of share rubles held by the bidders (in thousands of rubles). The coefficient is calculated on the date when the certificates are issued and immediately prior to the auction.

4. Bids and applications for participation in the auction

Applications for participation in the auction shall be submitted to the Chairman of the Commission for Land Privatization and Farm Reorganization. Experience shows that it is advisable to have two sets of bids - one for the auctioneer and his assistant and another for each bidder.

5. Documents proving land share use rights

These documents include a full list of entities and citizens willing to participate in the auction, specifying the total number of land shares and the type of ownership in land (leased land shares; shares contributions to the charter capital; shares purchased by an enterprise as a legal entity; property of peasant farms; unclaimed land shares).

6. Documents proving property share use rights

These documents include a full list of entities and citizens with the number of property shares for which they have use rights and a valuation of their property shares in thousands of rubles. These documents specify the way in which property shares are used (number of property shares contributed to the charter capital or purchased by the entity; number of shares owned by members of a peasant farm; number of unclaimed shares transferred to the new enterprise upon the Commission's decision).

7. Description of entities, purchasing power and liabilities of each bidder

This document contains the following information: list of enterprises, specifying their legal and organizational forms; list of citizens willing to set up a peasant farm or to pursue individual entrepreneurial activity; a short description of the main types of activity of entities and entrepreneurs; the total number of certificates of land and property share titles and their evaluation in hectare-points and share rubles with consideration of purchasing power coefficients of land share titles and share rubles; liabilities of entities and citizens pursuing individual entrepreneurial activity (in rubles).

8. Statement of correspondence between the bid and the bidder's purchasing power

This document states that the bidder's purchasing power in hectare points corresponds to the number of hectare points in his bid. If a bidder specifies in his or her bid less hectare points than he or she possesses, the reserve is calculated. The correspondence between the bid and the bidder's purchasing power at the property auction is calculated in a similar fashion.

Documents Prepared During the Auction:

9. Protocols of the land and property auctions

These protocols serve as the basis for the preparation of documents confirming the rights of new owners in land and property. The forms of land and property protocols are identical to the land and property lots description sheet except for a column in which the buying price of the lot, the number of the winning bidder, and his signature are entered.

10. Record of land and property sales at the auction

During the auction the total amounts of hectare points and share rubles spent by the bidders and remaining in their possession are constantly updated. For this purpose a special table is made in which all sales and the balance of hectare points and share rubles is accounted for. The assistant auctioneer and each bidder had this form.

11. Application for changes in the auction protocol

If during the auction bidders, who have applied for a land plot or property or who have won plots of land or property, decide to exchange them, they must submit a written application to the Commission for Land Privatization and Farm Reorganization. A similar document is submitted to the Commission if the exchange takes place after the auction.

Documents Prepared upon Completion of the Auction

12. An application to the Head of Administration and the Head of Land Resources and Land Management Committee on behalf of the Commission reporting the results of the auction and requesting them to carry out land management activities and to issue certificates of title to land sites.

The following documents must be attached to the application: copies of auction protocols; list of land sites which have been transferred to legal entities and private persons; applications of enterprise leaders and heads of peasant farms requesting land management activities and issuance of certificates of title to land sites.

13. Lists of land share owners, specifying their passport data and the size of their shares in hectares and hectare points.

14. Copies of land leases, deeds of gift, purchase and sale agreements and founding agreements of the newly established enterprises which form the basis for land share use rights. These documents must be submitted to the Committee for Land Resources and Land Management.

6.2.5. Exchange of Land Plots and Property Units

After distribution by lottery or auction, participants can *exchange their land plots and property units*.

The Commission must inform participants of the rules of exchange and establish a deadline for this exchange in order to avoid delaying the actual transfer of land and property to new owners. The time allotted for this exchange *should not exceed two weeks*.

The exchange is carried out on the basis of applications filed with the Commission and is documented by an appropriate protocol. This protocol of exchange is filed in addition to the protocol prepared during the auction or lottery. The exchange protocol must be signed by the exchange participants and the chairman of the Intra-Farm Commission (see Appendix 22).

6.2.6. Transfer of Land Plots as the Result of Distribution

During the final stage of land and property distribution the following steps must be taken:

- Completion of **land surveys** to determine boundaries of plots assigned to new agricultural enterprises and individuals; including maps for the new entities;
- Issuance of **documents certifying the right of ownership** to land plots in compliance with the laws of the Russian Federation; existing documents must be amended and updated;
- Preparation of **land use maps** for the new organizations.

The Intra-Farm Commission must work closely with the Raion Administration and the Committee on Land Resources and Land Survey.

The Raion Administration certifies ownership rights to land plots on the basis of distribution documents submitted by the Commission.

These documents include:

- applications of enterprises and individuals who have acquired land plots during the process of distribution;
- copies of distribution protocols;
- lists of land share owners;
- copies of lease agreements, deeds of sale/purchase and gift, and founding agreements, which are the grounds for the disposal of the land shares.

Based on the administration's decision, **the Raion Committee on Land Resources and Land Survey shall:**

- prepare and issue documents certifying ownership rights to land plots;
- record the transactions with land shares in the certificates previously issued;
- verify the proper procedures for preparation of maps, plans and land surveys while involving other organizations, if necessary.

6.2.6.a. Documents Certifying the Right of Ownership to Land Plots

Peasant (Individual) Farms

Persons establishing peasant (individual) farms are issued a certificate of ownership to the total land plot, which he or she has received in exchange for a land share, purchased, or received as a gift.

A plan of the land plot, made to the same scale as that of existing maps of the territory, is attached to the certificate.

The total area of land plots transferred into private property must not exceed the established limits of land plots assigned for setting up a peasant (individual) farm.

Agricultural Enterprises

Newly created enterprises are issued documents for land plots according to the terms on which they have used and disposed of their land shares.

Newly established enterprises purchase agricultural land and take possession of *land plots transferred to them in exchange for:*

- land shares contributed into the charter capital of the enterprise;
- land shares of owners who have contributed the right to use these land shares for a certain period of time;
- land shares that were purchased or acquired as gifts;
- land shares leased to the enterprise.

The documents for these shares vary according to the terms on which the shares were acquired:

- *Land shares purchased by the agricultural enterprise or acquired as a gift* are transferred to the new enterprise, accompanied by the appropriate certificate. Land plots whose area equals or exceeds the total area of existing land plots purchased by the enterprise are not subject to distribution unless otherwise provided for by Russian law or the founding documents of the enterprise.
- *If land shares are contributed to the charter capital* of an agricultural commercial enterprise, the enterprise, acting as a legal entity, is issued a

certificate of ownership to the land tract, the area of which must correspond to the contributed shares. A plan of the land plot is attached to the certificate. At this point, the certificates of ownership to land shares that were contributed to the charter capital of the enterprise are no longer valid.

- *If rights to use land shares are contributed to the charter capital* of an agricultural commercial enterprise, the plan of the land tract (the total area of which corresponds to the area of all land plots contributed to the enterprise) and the list of persons who have contributed these plots and the right to use them are attached to the founding agreements of the enterprise.

A *special entry* is made on the certificates of ownership to land shares by the Raion Committee on Land Resources and Land Survey (detailing the contributions of the right to use the land share).

If share owners contribute their rights to use shares, land in-kind may not be assigned.

Persons who have contributed their land shares or the right to use them to the charter capital of an enterprise are issued a document certifying their share of the charter capital contribution.

- *If land shares are leased to an enterprise*, an appropriate entry is made on the certificate of the right of ownership to this land share for each land share owner. The plan of the leased plot is attached to the lease agreement.

A group of persons can also be a lessor. In this case a multilateral lease agreement is concluded. The land plot whose area corresponds to the total area of leased land shares becomes the common property of the lessors. According to multi-lateral lease agreements, land shares in kind may not be allocated to individual lessors.

6.2.6.b. Transfer of Land Plots to Enterprises and Individual Owners

When land plots are transferred, new enterprises must make a decision on the following issues:

- | |
|--|
| <ul style="list-style-type: none">• how to form land tracts of land plots corresponding to land shares;• how to implement the rights of owners of land plots. |
|--|

Formation of Land Tracts

Forming land tracts correctly is of chief importance for the future stability of the enterprise.

There are a number of approaches to forming land tracts. The choice of approach is determined by the legal grounds for the disposal of shares (lease agreement, contribution of shares to the charter capital, etc.). The existing division into fields and plots is also important, as are the characteristics of the new enterprise.

The decision on formation of tracts is to be made by the assembly of share owners in exchange for whose shares the new enterprise acquired the land plots.

Recommendations on the Formation of Land Tracts:

- For land plots corresponding to land shares contributed to charter capital, it is advisable to form one integral land tract to be owned by the enterprise and not subject to distribution. This tract should also include land plots corresponding to land shares purchased and gifted. This land tract will be the basis for the future economic activity of the enterprise and will ensure its stability when the lease agreement is terminated or when some individuals decide to leave the enterprise. It is recommended that lands essential to the main productive activity of the enterprise be included in this tract.
- When use rights are contributed to charter capital, it is recommended that land shares associated with these rights form one tract. Although the right to use land shares is limited to three years, this term is likely to be prolonged if the enterprise proves to be economically viable.
- The location of the tracts should be determined by agreement with the land share owners who have transferred their shares to the enterprise on various terms. If agreement cannot be reached, the decision is made by lottery or by a procedure similar to an intra-farm auction.

Rights of Land Plot Owners

Issues concerning the rights of newly formed agricultural enterprises as owners of land plots may be addressed in a number of ways:

- **First Alternative**

Land plots in kind may not generally be allocated to lessors of land shares or owners of land shares who have contributed the right of use to their shares to the charter capital. However, these persons do have the right to receive land plots upon leaving the enterprise. In this case, an owner may receive a land plot corresponding to his or her land share.

The specific land plot is assigned from the lands used by the enterprise and belonging to the common property of the lessors and persons who have contributed the right to use their land shares to the charter capital.

Land plots are to be assigned in accordance with legally established procedures (Resolution No. 96). The land plot owner files one application with the Raion Administration and another with the head of the enterprise or a representative of the enterprise using the land.

Within one month of the application's filing a meeting of co-owners or their representatives must be organized to decide on the location of the land plot assigned in exchange for the land share. If a meeting does not produce a decision within the stipulated time frame, an intra-farm auction (or other method) must be held to determine the location of the land plot in-kind.

An additional difficulty in this procedure is the *unanimous vote* that must take place to adopt a decision on land plot assignment. First, each co-owner must be notified of the planned assignment. Then, the decision is deemed unanimously adopted unless there are objections filed within one month from the date of notification. The protocol of the meeting must be signed by all the co-owners or their representatives. If co-owners cannot reach a unanimous decision, the dispute is settled in court.

In practice, it is not easy to fulfill the above prerequisites for a number of reasons, e.g. some farm members live far away from the enterprise, heirs who have recently become farm members often cannot be reached. Thus, this approach to the assignment of land plots in-kind can become an obstacle impeding the realization of ownership rights.

In order to facilitate obtaining a land plot in-kind, farm members may decide to create an *exit land fund*--that is, to designate beforehand a particular land tract to be used for assigning land plots in kind for those farm members who choose to leave the enterprise or terminate their lease agreements. The quality of land in this tract should correspond to the average quality of agricultural lands used by the enterprise. The location of this tract must be approved by the Raion Committee on Land Resources and Land Survey.

- **Second Alternative**

The management of an enterprise may choose to *assign a specific land plot* to each land share owner immediately after the formation of the new enterprise.

In this case, all agricultural lands acquired by the enterprise as a result of land distribution are divided into plots according to the number of land shares that the enterprise may dispose of. The size of each plot is determined in hectare-points, which takes land quality into consideration.

Plot locations can be determined through the agreement of co-owners. If the quality of land is taken into consideration, the value of land plots will be approximately equal, enabling their distribution by lottery if the need to exchange them arises.

On the basis of land plot distribution, *each owner must be issued a certificate of ownership to a land plot together with a plan of the plot.*

Assignment of specific land plots to individual share owners ensures their rights of ownership. This approach enables owners to protect their rights and avoid complications in the event of their withdrawal from the enterprise, termination of lease agreements, or reorganization of the enterprise.

6.2.6 c. **Compilation of Maps**

On the basis of land assignment, the Committee on Land Resources and Land Survey ensures that maps of land use are compiled and issued for *each of the new enterprises*.

Maps must indicate the land plots acquired by the enterprise on various terms, in particular:

- land plots in the possession of the enterprise as a legal entity;
- land in common share ownership, including land contributed to the charter capital and land acquired against leased shares.

6.2.7 **Transfer of Non-Agricultural Lands**

During the final stage, the issues concerning non-agricultural lands in permanent use of the reorganizing enterprise (e.g. forest and water fund) must be resolved. In compliance with Resolution No. 874, these lands may be transferred to new agricultural enterprises free of charge unless otherwise provided for by current legislation.

While distributing non-agricultural lands among new agricultural enterprises one should take into account the following:

- If the non-agricultural land plots are located within agricultural land plots assigned to a new enterprise, the right to use these plots is transferred to this enterprise;
- Lands bordering agricultural land of one of the new enterprises are usually transferred to this enterprise;
- Other non-agricultural lands are transferred to the new enterprise on the basis of mutual consent;
- If more than one enterprise claims the same lands, the lands are distributed in proportion to the area of agricultural land held by these enterprises.

During the non-agricultural land transfer process, an agreement such as a lease should be drawn up, stipulating the terms of land use and the rights and liabilities of the parties.

6.2.8 **Actual Transfer of Property**

Newly created enterprises may begin operations only after all property and land plots acquired through the distribution process have actually been transferred.

Property transfer must be completed as soon as possible for the following reasons:

- New enterprises need to begin operations as quickly as possible. This is especially important for agricultural enterprises; delays in sowing, cultivating or harvesting, irregular feeding or milking can reduce profits dramatically.
- A smooth and rapid transfer of property will help safeguard the rights of the new owners and eliminate potential disputes related to the former status of the property. It is no one's secret that when the former collective owner is no longer interested in the condition of the property, the new owner does not have official documents for this property, disputes may arise concerning the safety and condition of this property. New and old owners can take joint steps in order to guard the property, but very often it is hard to do.

Property must be transferred *within one week after property distribution*. It is recommended that some property items, especially movable property, be transferred immediately.

Transfer is considered complete after the *Transfer Statement* is drawn up and signed. In some cases, it may be necessary to prepare additional documents and register them with the appropriate government bodies. The new owner may insure his property only after registration of such documents.

The Raion Administration monitors and controls the property transfer. The Intra-Farm Commission is responsible for the safety of the property up until the moment of transfer. Personal responsibility rests with the persons of the reorganizing enterprise in charge of the materials.

The recipient of the property has the right to demand *compensation for property lost or damaged* during the preparation for or implementation of distribution, or if the status of property does not correspond to the status entered in the lot sheet. This illustrates the importance of preliminary inventory and appraisal, lot formation, and control of property status during the process of distribution.

In cases where individuals or enterprises acquire current assets in storage at facilities belonging to other persons, it is recommended that these assets be removed and stored at the new owner's storage facilities as soon as possible, or that a bailment agreement be concluded with the storage owners.

Transfer Statement

The basis for the actual transfer of property is the Transfer Statement for each property item. This act is a standard accounting document containing information on:

- assessment of the item and the date of evaluation;
- location of the item;
- description of the property being transferred, its adherence to technical specifications and accompanying technical documentation;
- technical document number;
- book value, calculated depreciation;

- code of the person responsible for the safety of property at the moment of transfer;
- signature of the new owner;
- other data.

The Transfer Statement also contains entries from the account of the transferring party to the account of the accepting party. This point should be carefully considered for the preparation of the transfer statement and divisional balance sheet (see Section 6.2.9 for details about difficulties in connection with opening accounts of new enterprises).

In practice, enterprises use simplified forms of transfer statements (see Appendix 23).

To transfer tractors and agricultural machinery a Transfer Statement is needed, accompanied by the technical and accounting documents for these machines. In addition, the transfer must be registered with the Raion Agency on Technical Condition of Equipment.

The transfer of cars and trucks must be registered in the State Auto Inspection Agency.

To transfer buildings and other structures one must use the acceptance protocol, technical and accounting documents, design plans and specifications.

Agricultural equipment is transferred on the basis of the acceptance protocol and accounting documents.

To transfer livestock and current assets only an acceptance protocol is needed. If current assets remain in storage facilities belonging to other persons, it is necessary to conclude an agreement on storage.

Design plans and specifications, technical and accounting documents must be prepared by the Commission at the stage of inventory and appraisal of property. The Intra-farm Commission can invite representatives of the Raion State Auto Inspection to register new vehicle owners and representatives of the Raion Agency for the Technical Control of Equipment to register new owners of combines and tractors.

The transfer statements for all property items are the basis for making up a divisional balance sheet.

6.2.9. Preparation of the Divisional Balance Sheets

According to the Civil Code, in the event of farm division or break-up, divisional balance sheets must be drawn up. *The divisional balance sheet shall contain provisions concerning legal succession with regard to all obligations of the reorganized legal entity and with respect to all creditors and debtors thereof.* Failure to submit the divisional balance sheets with their accompanying documents, or the absence of provisions governing the assumption of obligations of the reorganized legal entities, will result in the state's refusal to register the newly emerged legal entities.

At present the procedures for drawing up divisional balance sheets under farm reorganization have not been fully developed. Some methods of forming entries

both in the assets and liabilities sections vary from region to region and farm to farm. However, some problems may be avoided early on, thus facilitating the preparation of divisional balance sheets.

Organizational problems

The newly created enterprises must have their own accounts before beginning the preparation of the divisional balance sheet. However, a bank can rightfully refuse to open accounts for the new entities without a divisional balance sheet. This problem may be solved at the regional level of authority (at the request of the Oblast Administration bank accounts may be opened before the divisional balance sheets are submitted). This should be done well beforehand, since opening a bank account is a time-consuming operation. Transfer of the liabilities to the emerging farms requires additional time and money.

Problems of accounting in the distribution of property and obligations among the newly formed farms may be resolved at the local level of authority using the practical experience of the economists and accountants of the farm. The main difficulties in making entries arise in:

- *the distribution of liabilities* among the new entities;
- *the forming of the charter (authorized) capital* of the new entities. The necessity of appraising land shares arises with land tenure rights, which did not previously exist on the reorganizing farm. When the chosen method of land and property distribution is an auction, contradictions in property values arising from share ruble revaluation during the auction must be resolved.

Honest and diligent work during the preliminary stage (especially the process of property inventory and lot formation, at which time the majority of property issues can be resolved) facilitates the drawing up of the divisional balance sheets following land and property distribution.

When auction is the chosen distribution method, accounting is less complicated if all property shares have been sold--regardless of whether they have been invested in the new entities' charter capital or bought on installment. Also, it is advisable to avoid having unclaimed land shares. All auction participants should be notified that unused shares are lost, and that unclaimed property is given to the Farm Commission for disposal.

Dividing the balance sheet

Division of the balance sheet is carried out **under the supervision of the chief accountant** of the reorganizing farm. Because the new enterprises are created in the course of reorganization, their balance sheets comprise different parts of the former farm's balance sheet. Every entry in the new balance sheet is derived from the original total in the reorganizing farm's balance sheet.

The property acquired at the auction by an emerging farm is entered into the divisional balance sheet of the new farm in the Assets Section and stated in the

Acceptance Reports. The *Acceptance Report* is drawn up in the form of a special table, which states the initial sum on every account and the division results with regard to their new owners.

The main assets and inventories according to the auction protocol and acceptance reports are transferred to the new farm as assets.

The financial assets and debts that cannot be sold pass pro rata to the legal successors according to the share fund.

It should be kept in mind that liabilities are split pro rata according to the apportioned share in the property fund, and not according to the realized property. If land and property distribution are carried out according to agreement, the price of property remains stable and no problems with the division of liabilities are experienced. When an auction is used, a participant may buy less property than he intended to, but pay a larger sum of share rubles than anticipated. According to the procedure for dividing liabilities pro rata according to the share fund, this will result in placing more debts and liabilities upon the buyer. Thus, the auction bidding process determines the value of a lot, regardless of its size.

When unclaimed property remains after the auction, it is accounted for, according to some experts, as payables (or “other liabilities”).

Thus the balance sheet will show what was put up for sale in assets (let us assume an item with a starting price of 105 million rubles), and charter capital (what was taken from the founders - 100 million rubles) plus other liabilities (5 million rubles).

After the auction the founders meeting has the right (and this right should be taken advantage of) to correct the **charter capital**. Bringing the **charter capital** in line with the size stated in the constitutive documents is carried out using the entry “Additional Capital” of the divisional balance sheet.

Time Requirements For Making Up A Divisional Balance Sheet

When auction is the chosen method for distribution land and property, preparing a divisional balance sheet requires 2 -3 weeks or longer, even under the best of circumstances. The reason for this is that, according to auction rules, those who gain land plots and property at the auction may exchange them. The parties apply to the Farm Commission, which approves the exchange and issues an addition to the Auction Protocol. The legal successors meeting then confirm the decision. All this can significantly prolong the time needed for completion of divisional balance sheets.

CHAPTER SEVEN

REGISTRATION OF NEW ENTERPRISES

Contents:

7.1. Main Principles

7.2. Registration Procedures

7.2.1. Registration of New Agricultural Enterprises

7.2.2. Registration of Individual Entrepreneurs

7.2.3. Denial of Registration



7.1. Main Principles

The legal basis for this stage of reorganization is laid down in documents that determine the terms and procedures for registration of new legal entities and individual entrepreneurs.

The 1994 Civil Code provides that any legal entity is considered to be created at the moment of government registration. (See Article 51 of the Civil Code). Government registration of legal entities and individual entrepreneurs is necessary for state regulation of their activities, protection of consumer rights, and the appropriate conduct of business.

Registration of new enterprises has particular legal significance for a reorganizing enterprise, because a firm is considered reorganized from the moment of registration of the newly created enterprises (*Article 57(4) of the Civil Code*).

Enterprises should be registered *after distribution of land and property* so that new owners have an opportunity to make contributions to the charter capital of new enterprises in the form of land plots and property units and use rights thereof.

Records on state registration are accessible for public review. A *state register* is maintained, reference to which makes it possible to ascertain the legal form of an entity, its number of founders, and the size of its charter fund.

- A legal entity which is organized as a commercial entity must have a *company name* registered in accordance with applicable procedures. The legal entity has an exclusive right to the use of that name. Any enterprise found to be using the registered name of another enterprise will be forced to change its name.
- The *legal address* of a legal entity is determined at the moment of registration and is indicated in the founding documents of the enterprise.
- If a legal entity has *subsidiaries or representative offices*, they must be shown in the charter documents and duly registered. (See *Article 55 of the Civil Code*).
- If a legal entity decides to reorganize, a *transfer statement and a divisional balance sheet* are confirmed by the founders and filed together with the new and/or amended founding documents of the new or existing entities (*Article 59, p. 2 of the Civil Code of the RF*).

Failure to submit the transfer act, the divisional balance sheet, or the terms of reference on rights and obligations of the reorganizing legal entity together with the founding documents may result in a denial of the state registration.

- **State taxes** must be paid for the registration of a legal entity, together with a **special fee** for the processing of the documents. The procedure for charging state registration fees in the Russian Federation was established by *Resolution No. 327* issued by the *Council of Ministers of the Russian Federation on June 14, 1991*. Pursuant to this resolution, these fees must be paid by all legal entities

created and existing on the territory of the Russian Federation, regardless of their legal form, type of ownership, or activities.

The exact amount of the registration (or re-registration) fee is determined by the local authorities. The local authorities have the right to waive registration (or re-registration) fees for certain enterprises. The applicant is responsible for payment of the registration fees.

State registration fees are not charged for *re-registration* of an existing cooperative or a small scale enterprise. Registration fees are paid at the bank prior to filing the application for the registration of the legal entity. The applicant submits a receipt or other form of payment confirmation together with the registration application and charter and/or founders' agreement to the person in charge of processing registration documents.

- Procedures for charging registration fees do not apply to *non-government organizations* on the territory of the Russian Federation that are obligated to register with the Ministry of Justice and its local divisions.
- The enterprise is given a *certificate of registration (or re-registration)* on an approved form. One copy of this certificate is kept on file with the registration authorities where the enterprise was registered or re-registered.

Once the certificate is received, it must be submitted to the tax and other appropriate agencies exercising regulatory control over entrepreneurial activities in accordance with applicable law.

- On January 1, 1992, the federal law *On Registration Fees from Individuals Engaged in Entrepreneurial Activities and Procedures for Their Registration* (December 7, 1991) went into effect. This law applies to persons conducting entrepreneurial activities without creating a legal entity.

The Ministry of Finance of the Russian Federation has approved registration forms for entrepreneurs who are not legal entities. The forms state the nature of an enterprise's business activities and must be filed with the local authorities along with certificates that are to be given to entrepreneurs who have duly registered as such. Copies of sample forms can be found in Appendix 25 and 26.

Engaging in entrepreneurial activity without proper registration, engaging in activity outside the scope of the registered activity(ies), or refusing to submit a registration certificate to tax officials can result in legal sanctions in accordance with applicable law. Tax authorities have the right to bring the matter to the attention of a court of competent jurisdiction by means of a suit requesting that all profits from the unregistered or unlawful entrepreneurial activity be forfeited.

7.2. Registration Procedures

7.2.1. Registration of New Agricultural Enterprises

After the founders have defined the legal form of their enterprise and drafted the necessary founding documents, they are required to register their enterprise with the Local Administration.

Enterprise registration is regulated according to *The Guidelines for the Government Registration of Enterprises*, approved by the Presidential Decree of 7 July 1994, No. 1482.

The following documents must be presented for state registration of a legal entity:

- An *application for the registration of an enterprise*, prepared in the proper format and signed by the founder(s);
- The *charter* of the enterprise adopted by the founder(s);
- The *founders' agreement*;
- Documents confirming that not less than *fifty percent (50%) of the charter capital* of the enterprise as shown in the founders' agreement (or charter) has been paid;
- A receipt or other form of state fees *payment confirmation from a bank*;
- The *transfer statement and divisional balance sheet*.

When registering a partnership (full or limited partnership), no charter is required; when registering consumer cooperatives and enterprises, no founders' agreement is required.

The founding documents are presented to the state authorities by the founders or their representative, or sent to the state authorities by certified mail with a cover letter listing the enclosed documentation.

The *official date of the submittal* of founding documents for registration is the official date of receipt by the registration bureau. The date may also be stamped on a certified mail receipt.

With respect to submitting founding documents for the registration of enterprises with charter capital exceeding the amount allowed by the anti-monopoly laws of the Russian Federation, the founders must present documentation confirming that the appropriate anti-monopoly authorities have agreed to the formation of the enterprise.

For *unitary organizations* with state or federal founders (organizations that do not own their own property but have the right to use state property in the course of their economic activities), documentation must be presented confirming that the appropriate state property committee or other authorized state organ has agreed to the conditions listed in the charter fund of the enterprise.

State registration *does not require letters of guarantee* nor any other documents confirming the address indicated in the founding documents.

The founders are personally liable for damages to third parties in the event of any discrepancies in the founding documents (charters) with respect to its address.

State registration authorities may not create any additional filing requirements for registration other than those set forth above.

The registration of an enterprise must be completed by the appropriate authorities within three (3) days from the date of filing of the required documents or within thirty (30) days from the date of mailing the documents for registration by registered mail, as indicated on the return receipt.

Registration documents are assigned a *registration number* and are officially stamped on the first (title) page with a seal showing the name of the registration body, the registration number and date of registration with an attached signature of a person empowered to approve the registration.

7.2.2. Registration of Individual Entrepreneurs

This form of registration applies to individual farmers (heads of peasant farms).

Pursuant to Article 257 of the Civil Code, peasant (individual) farms lost their status as a legal entity. To register a peasant farm the members develop and sign an agreement, which stipulates the name and range of authority of the head of the farm.

The head of an individual peasant farm is considered an entrepreneur and is required to register as such. For these purposes, an entrepreneur must present the following documents for registration:

- An application form approved for such use;
- Documents confirming payment of the registration fee;
- The agreement between the members of the peasant farm:

To *register by mail*, the above documents must be mailed to the registration authorities in an envelope with a pre-paid return postal delivery. State registration of entrepreneurs is conducted by the registration authorities on the day the required documents are presented, or within three (3) days after receipt by mail.

Within the same duration the applicant is given a permanent certificate of registration as an entrepreneur (for registration via mail, the certificate is mailed to the applicant). No other documents are required for registration. (Refer to Tables 37,38).

7.2.3. Denial of Registration

Registration applications can be rejected **only in the event that incomplete or non-conforming documents are presented** for registration by the applicant(s). Notice of the rejected registration application must be sent to the applicant(s) at the address shown in the documents, signed by an authorized person responsible for registration, and must indicate all the necessary documents or other requirements that must be provided by the applicant for registration.

Violations of the procedures established for creation of a legal entity and unlawful provisions in the entity's founding documents can result in rejection of the documents for registration. Rejection of a legal entity's application without just cause is forbidden. Registration denial may be contested in court.

Within seven (7) calendar days from the date of receipt of such a notice, enterprises must file additional or amended founding documents with the registration authority.

In the event the required or additional documents are not filed within this term, the authorities conducting the registration of the enterprise are required to bring a case to the local court for a decision concerning the legitimacy (in whole or in part) of the founding documents of the enterprise. The court's decision is the basis for annulling the registration of the enterprise or entrepreneur.

The annulment of the state registration becomes effective seven (7) calendar days after the date it is received by the registration authority. Within one week the fact of an enterprise's (or entrepreneur's) state registration (or annulment thereof) is communicated by the registration authorities to the tax inspectorate for inclusion in the state register. **The denial of state registration of an enterprise may be appealed by the enterprise or entrepreneur in court.**

State registration of legal entities

Necessary documents:

- Application by the founder
- Charter (except for economic societies)
- Founding agreement (or decision on setting up a legal entity) - *is not submitted in the event there is only one founder*
- Document certifying the approval of SCAP
- Documents confirming that not less than 50% of the charter capital of the ES has been paid
- A receipt of state fee payment confirmation
- *If the legal entity's founder is a unitary enterprise:*
Certificate of approval of the appropriate Property Committee or any other authorized agency of the amount and procedure for contribution payment

Local bodies of power (*where the enterprise is located*)

Within 3 (three) calendar days from the date of filing the required documents or within 30 (thirty) days from the date of mailing the documents:

- Make a decision on registration
- Issue a temporary certificate of registration
- Report the information of registration to the holder of the State register of legal entities

Registration procedure of specific enterprises (enterprises with foreign investors, banks and other legal entities) are provided for by appropriate legal acts.

Registration applications can be rejected only in the event that incomplete or non-conforming documents are presented.

Table 37

Types of legal entities and other organizational forms according to the Civil Code of the RF

Entrepreneur <i>art. 23-24</i>	
Legal entity or not	No, if the charter does not provide for otherwise
Founders	Citizens
Purpose of creation	Entrepreneurial activity
Liability of the founders	Personal
Founding documents	May be a charter
Charter capital	Allowed
Issuance of securities	No

State registration of an individual entrepreneur

- **INDIVIDUAL ENTREPRENEURS** are registered by registration agencies at the villages or cities where they officially reside on the day the required documents are presented, or within 3 (three) days after receipt by mail.
- **REGISTRATION** is considered annulled after the court's decision on the bankruptcy of the entrepreneur or on the day the registration agency receives the application of the entrepreneur to annul the registration and certificate.

CHAPTER EIGHT

CONTRACTS BETWEEN SHARE HOLDERS AND NEW ENTERPRISES

Contents:

8.1. Introduction

8.2. Types of Contracts

8.2.1. Lease Agreements

8.2.2. Other Agreements

8.2.2.a. Purchase-Sale Agreement

8.2.2.b. Exchange Agreement

8.2.2.c. Gift Agreement

8.2.2.d. Inheritance

8.2.2.e. Tax Liabilities

8.1. Introduction

Conclusion of contracts between land and property share owners and newly organized enterprises is of especial importance since *contracts are the grounds for the rights and duties of citizens and enterprises in a market oriented economy*. Contracts regulate commodity and money relations and determine the main rules for cooperation and joint activities.

Reorganizing farms can conclude a number of different types of contracts: *lease agreements, sale and purchase agreements, deeds of gift, and exchange agreements*.

The legal basis for this stage of reorganization--the execution of contracts between owners of land and property shares and newly organized enterprises--consists of legislation that regulates the procedures for executing, performing and terminating contracts. Several of these legislative documents have general application -- for example, the new *Civil Code (1994)*.

In accordance with *Article 420 of the Civil Code*, *contracts* are defined as agreements between two or more parties for the creation, amendment or termination of civil rights and obligations.

Individuals and legal entities *have the right to freely enter into contracts*. This also means that legal entities are free to choose partners. For example, the leader of a new enterprise can offer jobs to some workers of the reorganizing farm.

The farm workers, assessing the prospects of their work in the new enterprise, can either sign the contract or refuse it.

Contracts entered into under duress are considered invalid, except in circumstances where the obligation to enter into an agreement is required by law or was freely entered into through a prior contract.

A contract is considered effective if the parties have reached agreement on all essential points. Usually a contract becomes *effective* and binds the parties *when executed*. A contract may be concluded orally or in written form depending upon the type of contract, contents, requirements of law and the wishes of the parties. If the parties consent to make an agreement in a specific form, it is considered effective once it is put in the agreed-upon form, even if that particular form of agreement is not required by law.

A written agreement may be reached by drafting a single document signed by the parties, or by the exchange of documents sent by mail, telegraph, teletype, electronic or other reliable means.

The terms and conditions of a contract are determined by the desire of the parties, except in situations where the provisions of the contract are **mandated by law or other legal acts**.

The *essential points* of a contract are those required for the particular type of contract, together with the terms and conditions that either party considers essential.

For example, the contract on sale-and-purchase of a land share must be registered by the local administration. In the event of non-fulfillment of this provision the contract is deemed invalid and if a dispute arises, the parties cannot defend their rights in court.

Usually the contract becomes effective *from the moment of conclusion*. However, the parties may provide that the contract affects their relations *prior to the actual execution of the contract*.

If the contract does not indicate the *place* of execution, it is considered to be executed in the place of residence of the parties or the principle place of business of the legal entities that are parties to the agreement.

If an agreement deals with transfer of property, then the contract is considered effective upon *actual transfer of the property*. (Article 224 of the Civil Code). A contract that has to be registered is considered effective *upon its actual registration* with the appropriate governmental authorities, unless otherwise provided for by law, such as in the case of the sale and purchase of land or a residence.

A contract whereby one party is entitled to receive payment or other compensation for fulfillment of its obligations is a *"payment contract."*

For example, pursuant to a rental agreement for the use of a land plot, the lessee pays the lessor a set cash payment or transfers certain property (*i.e.* a truckload of firewood, etc.). As a rule, the performance of the agreement is carried out through a payment specified in the agreement between the parties. Parties can also agree upon the procedure for determining the price of the contract at the moment of contract execution (e.g. a tenant transfers to the landlord 10% of an actual crop).

In the event that the price of the payment contract is not and cannot be determined proceeding from the provisions of the contract, the contract can be fulfilled on the basis of prices for similar products or services.

For example, the contract envisaged lease payment in the form of plowing the vegetable garden. By the moment of fulfillment of the contract, the tenant's tractor got burned and he could not plow the garden. The contract will be considered fulfilled if the landlord is paid the sum of money which is usually paid in this region for plowing the garden.

A *"non-payment contract"* is an agreement whereby one party is required to do something to or for the other party without any payment or other consideration. For example, pursuant to a gift agreement, one party receives some kind of property, a valuable gift, etc.

In concluding a contract parties express their will. If a contract is concluded between two parties, two parties express their will. A sale and purchase contract between two parties is called a *bilateral contract*. Sometimes contracts express the will of several parties, as in the case when several persons lease their land shares to one person and all of these persons enter into one contract. Such contracts are called *multilateral contracts*.

If the parties cannot immediately determine the specific terms and conditions of their cooperation, they may execute a *preliminary agreement* (or memorandum of understanding) in which they agree to execute a permanent agreement for the transfer of property or performance of labor or services on general terms and conditions set forth in the preliminary agreement.

A preliminary agreement is executed in written form showing the term during which the parties are obligated to execute the permanent agreement.

For example, during reorganization of a farm, the workers may execute a preliminary agreement between themselves in which they set forth the terms and conditions for the organization of a new legal entity in the future, the size of their property shares to be contributed to the charter capital, and so forth.

If one of the parties to the preliminary agreement refuses to execute the permanent agreement, then the other party has the right to file a suit in court to require the other party to execute the agreement, or to order the payment or reimbursement of damages arising from the breach.

The situation may arise when the manager of a new enterprise personally works out the terms of a contract and proposes certain conditions for joint activity to persons on these terms and conditions. In such a situation, the other party(ies) can only agree to accept the contract in its entirety or forgo entering into the contract. This is called a *contract of adhesion*.

The *expiration date of a contract* may be set forth in a contract as a specific date (e.g., 5 March, 1996), the passing of a period of time (e.g. 6 months), or the occurrence of an event (e.g. the end of harvest).

If a *dispute* arises between the parties in the process of executing the contract and the case is taken to court, the court studies the contract and takes into consideration the literal sense of the words and expressions used in the contract. In the event some terms are vague, the essence of contractual obligations is established by analyzing the contract as a whole. Under such circumstances the court takes into consideration all the attendant circumstances, including preliminary discussions and other relations that may exist between the parties.

CONTRACT

An agreement of two or several persons considering the establishment, change or termination of civil rights and duties (art. 420)

MAIN PRINCIPLES

1. Freedom of contract (art. 421)
2. Contract must correspond to rules established by legislation which are binding upon the parties (imperative norm) (art. 422)

Labor contract

Civil contract

Preliminary contract
(art. 429)

Contract of adhesion
(art. 428)

Payment contract
(art. 423)

Non-payment contract
(art. 423)

Public contract
(art. 426)

Contract to benefit a third person
(art. 430)

The parties oblige to conclude a contract in the future

One party determines the terms, other parties accept them and adhere to the contract

Contract under which parties receive or do not receive payment

Contract concluded by a commercial organization and establishing its duties with respect to everyone who has recourse to it

The debtor is obliged to make performance not to the creditor, but to a third person specified by the creditor

CONTRACTS

PAYMENT

Sale and purchase

Lease

Services

Transportation

Insurance

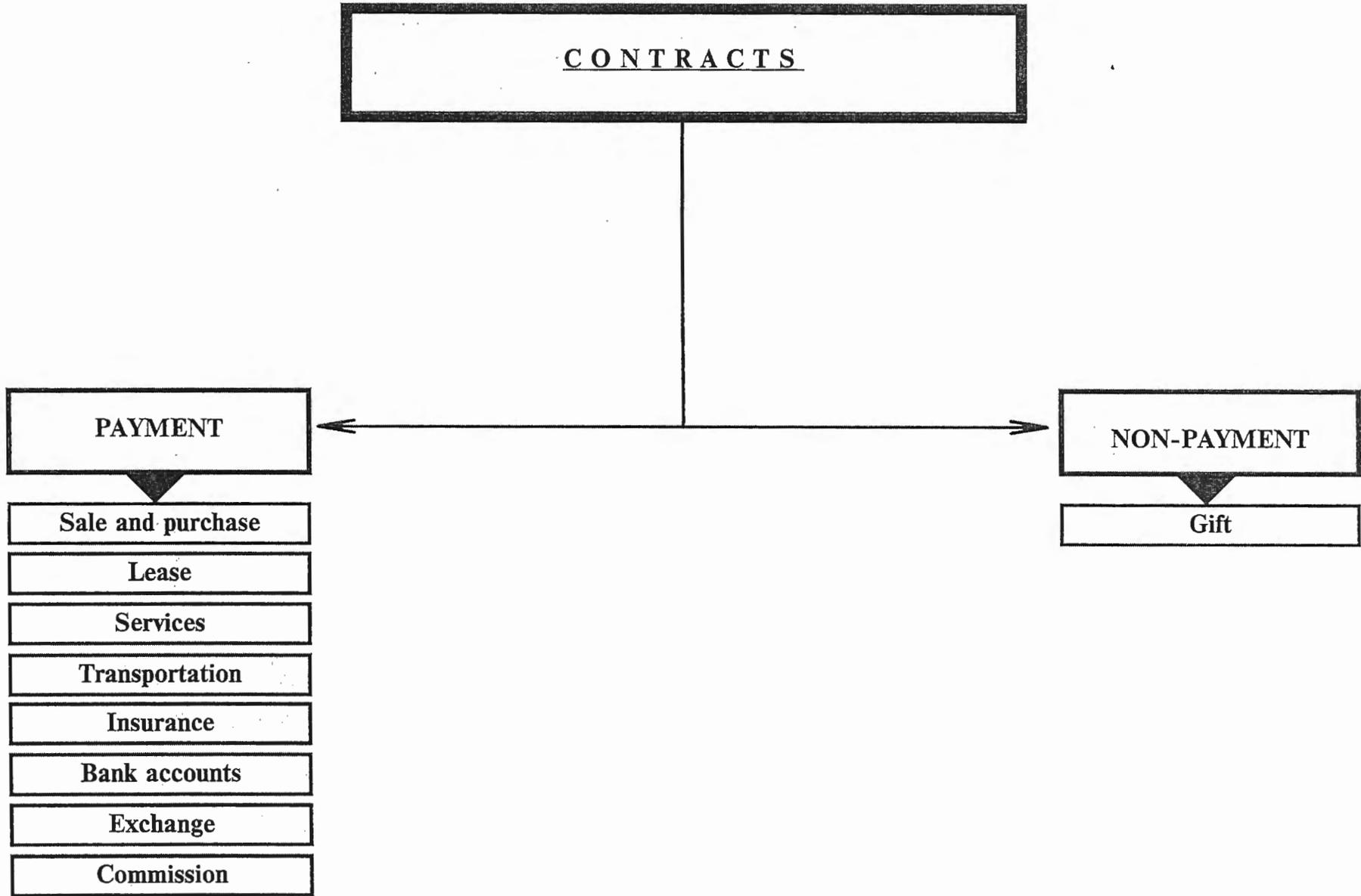
Bank accounts

Exchange

Commission

NON-PAYMENT

Gift



8.2. TYPES OF CONTRACTS

8.2.1. Lease Agreements

In a **lease agreement**, the lessor obligates himself to temporarily transfer property to the lessee for the lessee's control and/or use in exchange for payment. Production, produce or other income received by the lessee from use of the leased property in accordance with the agreement is the lessee's own property.

Property lease contracts and land lease agreements have certain particularities. Land leases are of major importance for newly organized enterprises.

Land Lease

Land leases can be concluded among workers of the reorganized farm, between workers of the reorganized farm and any citizen, between a land share owner and the newly organized agricultural enterprise, or between a land share owner and a peasant farm.

Land leases can be concluded for specific land sites or for land plots that have not been specified and allocated in-kind. In concluding such land leases the **tenant** should keep in mind that the leased land site is a part of the common property belonging to the **landowner** and other enterprise participants and that the size and location of the land share may be changed but its evaluation in hectare-points will remain constant.

The land lease becomes valid from the moment of its registration at the Raion Committee on Land Resources and Land Management and remains valid for the full term as stated in the contract unless terminated by the parties.

If the tenant applies for a land site in-kind he is obligated to notify the landowner and to obtain his written approval.

The tenant can use the leased land site only for the purpose of agricultural production and has no right to sell, mortgage, or dispose of it in any way without the written consent of the landowner.

Parties cannot transfer their rights or their obligations arising from a lease agreement without a preliminary written consent of the other party. Any attempt at such a transfer is considered illegal.

The tenant has the right:

- of ownership of the agricultural crops and plantings on the rented lands;
- to use commonly found minerals, peat, forests and bodies of water (in legally established ways);
- to carry out amelioration and drainage of land in accordance with environmental regulations.

The tenant is obliged:

- to register the contract at the Committee on Land Resources and Land Management at his own expense;
- to raise the fertility of land and to prevent environmental damage on the leased land site and on neighboring land as a result of his activities;
- to follow established rules for the use of land;
- not to violate the rights of other land users;
- to pay rent and other expenses in connection with the leased land site in a timely manner.

Property Lease

In concluding a contract for *lease of property* the parties assume certain obligations. The lessor is obliged to transfer to the lessee the given property in a condition in accordance with the terms and conditions of the agreement. The lessor is liable for defects in the property, even if these were not known at the time the lease agreement was signed, and unless otherwise provided by applicable law or the agreement, the lessor is required to make capital repairs to the leased property.

The lessee is required to use the property in accordance with the agreement and the designated purpose of the property, maintain it in good condition, perform necessary repairs unless otherwise provided by applicable law or agreement, and pay rent in a timely fashion. The lessee has the right to sublet the property with the consent of the lessor, unless otherwise provided by law. After the termination of the agreement, the lessee is required to return the property in the same condition in which he received it, with reasonable wear and tear excepted, as stated in the agreement.

Production, fruits, crop and other revenues received by the tenant as a result of using the leased land and property in accordance with the contract become the tenant's property.

If the lessee makes *detachable improvements* to the property during the term of the lease, these improvements are his property unless the agreement provides otherwise. If the lessee makes fixed improvements to the devised premises with the lessor's consent that subsequently cannot be removed without damage to the demised premises, he has the right to reimbursement for the cost of these improvements upon termination of the lease, unless the agreement provides otherwise. The cost of fixed improvements made by the lessee without the lessor's consent will not be reimbursed, unless otherwise provided by law.

The transfer of ownership rights (for full management or operational control) to property leased to another person or entity is not a basis on which the rental agreement can be amended or terminated. Upon the expiration of the term of the agreement, the lessee has a preferential right to renew the lease provided that he has fulfilled all his obligations under the lease agreement.

If the lessee continues to use the property after expiration of the lease agreement without objection from the lessor, the agreement is considered to be automatically renewed on

the same terms for an undefined term. In this case, each party has the right at any time to terminate the agreement upon three months advance notice to the other party, unless otherwise provided by applicable law or the terms of the agreement.

The rental agreement may stipulate that the *leased property may be transferred to the ownership of the lessee* at the expiration date of the lease or during the term of the lease upon payment by the lessee of a *purchase price*.

If terms for buyout of the leased property are not set forth in the agreement, they may be added by an amendment to the agreement which may provide that the rental payments to that date are credited to the purchase price.

After the expiration of the land lease agreement all the rights arising from the land share and the corresponding land site are transferred to the landowner.

The forms for different types of lease agreements are given in Appendix 27.

8.2.2. Other Agreements

The reorganization process incorporates the use of a wide variety of agreements: purchase-sale, rental, gift, exchange and so forth. Sample documents are attached in Appendix 27.

8.2.2.a. Purchase-Sale Agreement

In a purchase-sale agreement, the seller is obligated to transfer property to the purchaser, and the purchaser agrees to accept the property and pay for it in the amount set forth in the agreement. Purchased property owned by an individual or a legal entity can be disposed of at will. There are some exceptions to this rule; for example, land plots acquired in the process of reorganization can be used only for agricultural production purposes. It is prohibited to sell agricultural lands for cottages, garages, and the like.

Resolution No. 503 of the Russian Federation Council of Ministers, Ratification of Procedures for Sale and Purchase by Citizens of the Russian Federation of Land Plots (30 May 1993) provides that the purchase and sale of land plots is only permitted when there are no disputes regarding the plot and no legal reasons precluding the transaction.

- *The purchase-sale transaction of a land plot* is concluded between the owner-seller and the purchaser or his or her authorized representative by means of the purchase-sale, or sales agreement. Upon execution of the sales agreement, neither the seller nor the purchaser may change the use designation of the land. If the seller so desires, he can enlist the aid of the regional Committee on Land Resources to sell the property by auction.

The price of the land plot and payment terms will be determined by agreement between the buyer and the seller or by the results of the auction.

The buyer pays to the seller a certain sum of money, transfers property, or offers services according to the contract. As a rule the buyer not only covers the cost of the land share but also pays taxes and other fees for the proper preparation and registration of the contract.

A survey plat of the land plot should be attached to the sales agreement. *A sales agreement without a plat attached will not be accepted for registration.* In the absence of a plat of the land plot, the preparing of a survey plat is paid for either by the seller or purchaser according to their agreement.

- **Title to the land plot** passes from the seller to the purchaser upon the registration of the notarized sales agreement with the regional (raion) or city Committee on Land Resources.

The purchaser's title to the land plot is registered with the local authorities. The document confirming the seller's title is submitted and becomes invalid or is amended as necessary, so that proper title documentation can be issued to the purchaser certifying his title to the purchased land plot.

8.2.2.b. Exchange agreement

Under an exchange agreement, (*See Article 255 of the 1964 Civil Code of the RF*) an exchange of one piece of property for another is conducted by the parties to the agreement. Each of the parties to the transaction is considered a seller of the property he gives and a purchaser of the property he receives.

8.2.2.c. Deed of gift

Under a gift agreement, (*See Article 256 of the 1964 Civil Code of the RF*) one party transfers the ownership of property to another party without any compensation.

A gift agreement concerning property of substantial value (for example, a land share), requires a written agreement and notarization.

The gift of a residence, other buildings and lands must be registered with local authorities.

8.2.2.d. Inheritance

The inheritance of property proceeds according to the will and testament of the deceased or according to law. Inheritance by law occurs only when the deceased has failed to leave behind a will (intestate).

The heir receiving an inheritance is liable for the debts of the deceased on a pro-rata basis according to the actual value of property he or she inherits. Bank accounts are inherited according to general rules regulating inheritance.

A person can will all or part of his property to one or several individuals who are not heirs at law, to legal entities, or to the state. The decedent can disinherit one or more of his legal heirs by means of his or her will. Invalids and minors have priority over

other heirs and possess a guaranteed right to inherit their legal share, regardless of the provisions of the decedent's will.

Wills must be notarized.

8.2.2.e. Tax liabilities

- Presidential Decree No. 2118 *On Tax Payments For Land Plots Sold and other Land Transactions* (07 December 1993) stipulates that upon conclusion of a **sales agreement**, the seller of a land plot or land share must pay taxes in accordance with the *Law of the Russian Federation On Income Taxes on Individuals*, whereas legal entities must pay taxes in accordance with the federal law *On Profit Taxes on Enterprises and Organizations*.
- On income received by individuals **from the sale of land plots or land shares**, the aggregate taxable income includes an amount exceeding five thousand (5000) times the legally established minimum monthly salary.

When land plots and land shares are sold by citizens to enterprises, taxes are paid by the enterprises.

The final computation of taxes on the sale of a land plot or land share by an enterprise is conducted upon notice from the tax authorities based on the cash payments made to the seller. At the end of the year, the seller is required to file with the tax inspectorate at the place of his permanent residence a declaration stating the actual amount of income from the sale (See attached chart).

In accordance with *Article 2 of the Law On Property Taxes on Inheritances and Gifts* (12 December 1991) **taxes on inherited land or property shares** are levied when the value of the property exceeds 850 times the minimum monthly wage on the date the probate is commenced; or in the case of gifts, if the value of the gift exceeds 80 times the minimum monthly wage on the date of the gift. The same procedure applies to the gift or inheritance of **land plots**. (See chart attached).

STATE DUTIES AND TAXES ON CONTRACTS

Contracts	State duty for notarization	Property tax	Income tax
Sale and purchase	3% of the sum of contact, but not less than the minimum wage (p. 42 of Regulations No. 5 of STI of the RF)	.1% annually of the value of the building - inventory value <u>Tax exempt:</u> ***pensioners (art. 3,4 of the Law of the RF "On Property Tax")	Proceeds from the sale of housing, country houses, land shares not exceeding 5000 times the minimum wage are not included in taxable income. Other property - up to 1000 times the minimum wage (art. 3 "T" of the Law of the RF "On Property Tax")
Deed of gift	3% of the sum of deed but not less than the minimum wage (p. 42 of Regulations No. 5 of STI of the RF)	When the value of the deed is equivalent to 80 times the minimum wage - tax exempt; 80-850 times the minimum wage in the event of gift from parents or children - 3% of the contractual value of property; gifts from other persons - 10%.* (art. 3 of the Law of the RF "On Tax On Property Given as Gift or Bequeathed") <u>Tax exempt deeds of gift:</u> 1) gift to a spouse; 2) gift of a house or an apartment to persons residing together.	<u>Tax exempt:</u> Art. 3 "T" of the Law of the RF "On Property Tax

* In the event the value of property is over 850 times the minimum wage the calculation is more complex

TAXES ON CITIZENS INHERITING PROPERTY

State duty	Property tax	Income tax
<p>Will notarization - the minimum wage; Issuance of certificate on the right to inheritance - 1% of the value of inherited property (Letter of STI No. NI-4-04-16 of Oct. 15, 1993)</p>	<p>Up to 850 times the minimum wage - tax exempt; from 850 to 1700 times the minimum wage - first inheritors - 5% of the value of inherited property; second inheritors - 10%; other inheritors - 20% (art. 3 of the law of the RF "On Taxes on Property Transferred as Inheritance or Gift")</p> <p><u>Tax exempt:</u></p> <ol style="list-style-type: none"> 1) surviving spouse; 2) heirs residing together in the event of inheriting a house (apartments), or a share in a condominium; 3) invalids of categories I and II inheriting housing and vehicles (art. 4 of the law of the RF "On Taxes on Property Transferred as Inheritance or Gift") 	<p><u>Tax exempt:</u> Art. 3 "T" of the Law of the RF "On Property Tax"</p>

CHAPTER NINE

ORGANIZING THE ACTIVITIES OF NEW ENTERPRISES

Contents:

- 9.1. **Procedures for Termination of Workers on the
Reorganizing Enterprise**
 - 9.2. **Hiring Workers for New Enterprises**
 - 9.3. **Labor Contracts**
 - 9.4. **Protection of Workers' Rights and Interests**
 - 9. 5. **Preparation of Business Plans**
-

9.1. Procedures for Termination of Workers on the Reorganizing Enterprise

The reorganization of a farm often results in layoffs of workers from the previous farms and the subsequent hiring of many of these employees by the newly created enterprises.

However, not all laid off workers will be employed by the newly created enterprises, despite the fact that they may have transferred their land and property shares to these enterprises. Some of them will have to seek employment elsewhere.

It is important to keep in mind that a worker has **the right to choose a new workplace** either by direct contact with another enterprise or via the free placement services of the Department of Labor.

Practical experience shows that the process of reorganization can result in a variety of infringements on individuals' rights that upon court review may result in significant monetary awards for damages. Often these infringements are the result of ignorance of the law and normative acts. In order to reduce the risk of such occurrences, it is necessary to review means of complying with these requirements during reorganization.

The procedures for notifying and terminating workers requires the farm management to advise the **Department of Labor and union organizations** at least three months in advance of the imminent layoffs (*See Article 40.2 of the Labor Code of the Russian Federation*). Only general information, without regard to position and qualifications, must be provided at this stage. However, two months prior to termination, the farm management is required to inform the Local Department of Labor of all details concerning the profession, specialty, qualifications and salary of each worker whose employment is to be terminated.

In accordance with *Article 40.2 of the Labor Code* each worker must sign a form indicating that he or she has received due notice **two (2) months in advance** of termination. For this purpose, the farm management must write a collective notice of termination with a list of all workers to be terminated, following the given format (see *Appendix 2*):

(name of worker)
signature

(name of worker)
signature

(name of worker)
signature

etc.

Consider the termination due to the farm reorganization to be effective on _ 199

Date

Signature of the General Director

Two (2) months after the initial notice of termination has been sent, the management of the reorganizing farm writes an official collective letter of termination with the names of all workers to be terminated in the following format:

_____ (name of worker) _____	_____ {position} _____
_____ (name of worker) _____	_____ {position} _____
_____ (name of worker) _____	_____ {position} _____

are terminated effective " _____ " _____ 199__ due to the reorganization of the enterprise in accordance with *Article 33, paragraph 1 of the Labor Code*. These workers will receive benefits and compensation, as provided by *Article 40.3 of the Labor Code*.

I (we) hereby acknowledge receipt of this letter:

_____ (name of worker) _____
signature

_____ (name of worker) _____
signature

_____ (name of worker) _____
signature

etc.

If there is a trade union on the farm, layoffs must be coordinated in advance with the elected body of the union.

9.2. Hiring Workers for New Enterprises

During the issuance of termination notices, the new management of the future enterprises should offer workers employment in the newly created legal entities. Of course, the new management may offer preferential treatment to those workers who they believe will be the most productive.

Equal employment opportunities and non-discrimination in hiring must be utilized during the hiring process, all of which is discussed in *Paragraph 2 of Article 16 of the Labor Code*. However, differences, exclusions, preferences and limitations in various aspects of labor do not constitute discrimination if they are related to a particular job or state provision of social protection or assistance.

If a worker agrees to be transferred to the new enterprise, the following procedure is recommended for his termination and re-hiring:

The administration of **the existing farm** terminates the worker and makes the following entry in his/her employment record ("trudovaya knizhka") :

"Terminated due to the transfer to _____ name of new enterprise _____. Effective _____ 199__ pursuant to *paragraph 5 of Article 29 of the Labor Code*."

In the newly created enterprise, the following letter of appointment is written:

" _____ {name of worker} _____ is hired as a transfer worker.

Basis: Labor Contract of "____" _____ 199__.

I hereby acknowledge receipt of this notice and agree to this appointment:

_____ (name of worker) _____
signature

On the basis of this letter of appointment, a corresponding entry is made in the worker's employment record.

During the hiring process, the worker to be hired must present a number of documents, including his or her passport, employment record (unless the worker has no work history), documents concerning the worker's education, and, for certain positions, a certificate of health. It is not permitted to require documents other than those specified by labor laws

In accordance with *Article 18 of the Labor Code*, workers are hired on a contractual basis, and the contract is drafted in two copies, one for each party.

9.3. Labor Contracts

A *labor contract* is an agreement between an individual and a legal entity, pursuant to which the individual is required to fulfill the assigned work according to his or her specialty, qualifications and position, and the enterprise is obligated to pay the agreed wages and to provide adequate working conditions, as required by the *Labor Code*, the collective agreement, and the agreement between the employer and employee.

All labor contracts must be executed in written form and must contain not only general, but also specific terms and conditions. The written contract is the principal document for settling all misunderstandings that may arise concerning the respective rights and obligations of both employee and employer. A sample labor contract can be found in Appendix 28.

The contract is a legal basis for the letter of appointment. Because deviations from the correct formulation of labor relations with employees may occur, the legislation safeguards the rights of the worker by introducing the rule that a worker is considered hired regardless of whether the written agreement was properly drafted and executed. (See *point 3, Article 18 of the Labor Code*).

Labor contracts with workers hired as "transfers" must be executed on the first day of work following the termination of their previous employment, provided the parties have not agreed otherwise. If, due to administrative negligence, the contract/letter of appointment is not prepared on time, leading a worker to miss a working day(s), he or she is entitled to these wages pursuant to *Article 213 of the Labor Code*.

A worker to be hired may be given a **probation period** in order to ensure that he or she is capable of properly performing the job. Applicable law provides that such a probation period not exceed three (3) months, or in some cases, if the trade union agrees, up to six (6) months. The terms of the probation period must be stated in the letter of appointment.

By agreement between management and the worker, the probation period may be less than three (3) months. In accordance with *Part 2, Article 22 of the Labor Code*, periods of physical disability and/or other temporary absences from work are not counted as part of the probation period.

In such cases, the probation period is extended, but the total probation time cannot exceed the term provided by law. If the probation period ends, and the worker continues to work, he or she is considered to have successfully passed the probation period, and subsequent termination of the labor contract can be carried out only according to the established termination procedures.

If the worker's performance during the probation period is unsatisfactory, the worker may be terminated by the enterprise management without consulting with the trade union and without severance pay. The worker has the right to appeal such termination in the local (city) people's court.

Probation periods are not set for the following categories of workers:

- young workers under 18;
- young workers in their first employment after graduation from vocational schools;
- young specialists in their employment after graduation from higher educational institutions;
- World War II veterans/disabled persons if special job positions have been reserved for them.

A probation period may not be set for persons who have moved to another location or transferred to another enterprise.

Vacancies requiring high qualifications may be filled by means of **a competition** among applicants. The results of a competition are determined by collective decision--for instance, by the board of directors.

Labor agreements may be executed:

- (1) for an indefinite term;
- (2) for a stated term, not exceeding five years, **depending on the character of work to be fulfilled, working conditions and interests of the worker, as well as in cases directly stipulated by law;**
- (3) for the period required to fulfill certain specified work.

9.4. Protection of Workers' Rights and Interests

A labor contract is invalid if it imposes working conditions that are below the standards required by applicable law (Part 1, Art. 5 of the Labor Code).

For example, if a contract provides that a worker will be entitled to only 20 days of annual leave, whereas Art. 67 of the Labor Code requires at least 24 days vacation, then it will be invalidated.

Practical experience shows that profitable enterprises use **various incentives** to attract workers with special social needs (invalids, mothers with many children, etc.). The enterprise may compensate these workers with additional leave, no-cost meals, trips to guest houses or vacation resorts with travel expenses paid, loans for home improvements, subsidies for nursery schools and day care, salary bonuses for long term employment, and retirement bonuses and benefits.

In some cases, circumstances are such that none of the newly created enterprises wants to hire a terminated worker. There may be various reasons for this situation, e.g. a personality problem, alcohol abuse, etc.

If a worker **is not hired** by a newly created enterprise, then upon the termination of his/her labor contract with the old farm enterprise (in connection with layoffs), the worker is entitled to:

- 1) one month's severance pay based on average monthly wages;
- 2) up to two (2) month's average monthly wages during the worker's search for new employment;
- 3) in some circumstances, a worker may receive an additional (third) month unemployment compensation if he/she applies to the appropriate authorities **within two weeks** after his/her termination, and is not thereafter employed.

The calculation of severance pay is based on the worker's average wages earned at his last place of employment. A workers' employment status (for pension purposes) is considered to be **uninterrupted (continuous)** if his or her employment was interrupted for **less than three months**.

9.5. Preparation of Business Plans for the Newly Organized Farms

A **business plan** is a document which determines the enterprise's program of activity and sets its short-term and long-term tasks and goals.

Business-plans of the newly organized farms depend on many variables: specialization, size, legal and organizational form. But all farms in preparing business plans, have to answer a number of key questions in order to determine production and marketing strategy, and to describe problems that they will inevitably face in the process of independent operation.

Regardless of the farm's specialization, its management has to:

- determine the farm's position on the market and its marketing channels, and find ways of making the farm viable;
- establish links with:
 - procurement and processing organizations;
 - equipment suppliers;
 - financial institutions;
 - the tax service;
 - the local Administration;
- determine the optimal production system.

Even if a new enterprise is organized on the basis of an independent production unit where workers have the necessary experience and skills, its production system will need corrections. As a result of property and land distribution and the formation of new work collectives, the level of mechanization, availability of resources, management structure and the functions of workers change. All of these changes are included in the corresponding chapters of the business plan. Business plans help enterprises to solve new and difficult tasks - to undertake marketing, to change production in accordance with market requirements, to find profitable marketing channels and indispensable financial resources.

9.5.1. Stages of Business Plan Development

The following sequence of actions allows an enterprise to compile a comprehensive and logical business plan

- Analyze the market
- Analyze production possibilities
- Make strategic plans
- Carry out financial analyses
- Present the results of one's work in the appropriate manner.

9.5.2. Basic Information on Business Plans

Development of business plans requires a lot of preparatory work.

The basic information can be divided into three groups:

- information about the market and marketing projections;
- information about production;
- financial information.

Marketing Information includes data on:

Annual demand for the particular product. It is necessary to check which of the products available on the farm are in high demand. If during previous years a product could not be sold on the local market then one should plan to reduce production of that crop and substitute it with a different crop. Market may be rather stable for a particular product and its marketing may be rather easy. Marketing of other products may be difficult and will demand special skills to find wholesalers and retailers, and expand sales.

Potential buyers and marketing channels. Links should be established with procurement organizations, wholesalers and retailers. Special attention should be paid to the needs of processing enterprises. Newly created farms should study marketing channels of the enterprise from which they have evolved.

Potential competitors, who could enter the market with a similar product. Among them are neighboring farms organized on the same basis.

Prices, offered by buyers. It is useful to have a table of prices for the main products sold through different marketing channels in recent years.

Sources for this information include local publications, representatives of the local Department of Agriculture and procurement organizations. It is important to follow the developments on the neighboring farms and to evaluate their competitiveness on the market.

Production information includes data on

Available land, labor and material resources. Information about production assets allows for an estimate of the enterprise's capacity, and the need for additional investment and expansion to new market sectors. Special attention should be paid to depreciation costs, equipment wear and tear, and the need to change equipment. Information about the workers' qualification, skills and work experience is also of great importance.

Resource utilization, including crop yield and crop rotation, the number and productivity of cattle, and animal feed consumption.

Costs calculated per centner of crop, per cow, per hectare of cropland and per worker.

Production information is needed for the development of a **production program**, which determines farm specialization and projects a possible switch from one product

to another with a change in the market situation. Full production information is a necessary precondition for the correct and effective use of resources.

Financial information is used to carry out a general estimate of the financial aspects of the enterprise's activities. There are three groups of financial indices necessary to evaluate the farm's viability: profit and loss projections, cash projection and cash balance.

9.5.3. Content and Structure of a Business Plan

A Business Plan usually comprises the following chapters:

- 1) *Introduction*
- 2) *The enterprise and its position in raion agriculture*
- 3) *Products (works or services)*
- 4) *Markets and sale*
- 5) *Production program*
- 6) *Organizational plan*
- 7) *Possible risks*
- 8) *Financial plan.*

9.5.4. Recommendations for Developing a Business Plan

1) Introduction

This section contains the name and address of the enterprise, the names and addresses of its founders, the main provisions of the proposed business plan, its aims and the need for additional finance. The introduction is usually written after the business plan has been developed. This section describes the main provisions of the plan and allows its readers to get a general idea of the farm's main types of activity and potential.

The Introduction should be written in the form of a promotional document. If it is well written it may help to attract potential creditors or investors. The main types of activity should be described in a clear way and the forecast for future profits should be well grounded. It is necessary to prove that the strategy, chosen by the enterprise, will be successful and that the future investments will bring profit.

2) The enterprise and its position in raion agriculture

This section describes the enterprise's main types of activity and its goals, provides information about the principal farm before reorganization and its position in raion agriculture. The current economic situation and its development should also be described in this section. It is important to characterize the enterprise within the context of the raion agricultural situation and to demonstrate a good knowledge of the current situation of agricultural sectors where the enterprise is going to work and compete.

3) Products (works or services)

This section describes products and services offered by the farm, and provides brief information about the production technology in crop growing or cattle breeding.

The product's description should not be overloaded with technical details but should stress the product's advantages (quality, variety or ecological advantages). A detailed description of the technological process can be given as an Appendix.

Special stress should be given to the strengths of the particular product (services) such as higher quality, brand name, nutrient content, low cost or anything that makes it attractive to customers.

4) Markets and sales

In a market-oriented economy, markets and marketing are important for all types of enterprises. The most efficient means of production and the highest quality products are useless unless they have a customer. That is why special attention should be devoted to this section. It is necessary to prove to potential creditors and investors that the products can be readily marketed.

The size of the market should be explained (either in terms of the raion sale volume for the farm's main product, or, if the farm is located near oblast capital, the oblast's sale volume). The main product's market share should be estimated for the last 2 or 3 years.

Principal marketing channels for the main product, including state procurement organizations, wholesalers, local agricultural markets and barter should also be described. A marketing outlet should be chosen with consideration for possible competitors who may be stronger with regard to one product and weaker with regard to another. Characteristics of the enterprise's main competitors should be provided, and a survey made of potential customers.

Marketing strategy depends on how the enterprise evaluates its position in the market, the availability of external help, credits, etc. The personality of the manager (owner) and his/her willingness to take risks are also important factors. If an enterprise prefers to develop slowly but steadily by taking relatively few risks (a strategy of stable profits) its optimum path might be to enter into a long-term contract with a procurement organization, which guarantees procurement of the produce at a low but assured price. A manager eager to maximize the profit would most probably hold back goods and wait for the best customer. Higher profits may be made by decreasing production costs or by selling the produce at a higher price.

5) Production program

The production program is aimed at determining the type of activity and the best way of using available resources and production capacity for the enterprise to reap high profits. The following major production indices should be included in this section: crop area, crop yield, number of cattle head, projected milk and meat yield, gross production and projected volume of sale. It is recommended to work out a balance

sheet for the major types of products, including a description of gross product use and intra-farm consumption.

All production processes and procedures should be described in this chapter. A land tenure system and projected crop rotation, projected use of fertilizers and projected crop yield should be included in this section. **Technological maps** are developed for each major type of product in order to calculate costs. Information needed for the development of technological maps (material costs and cash expenditures per hectare and per head of cattle under the projected productivity) can be obtained from the economist of the reorganized farm.

Gross production cost and sale revenues under projected levels of prices and expenses, permit the calculation of a projected level of **profitability** for each product, as well as per hectare of plow land, arable land and per head of cattle. This information is the foundation for the development of the financial program.

Sequence of steps in the process of developing a production program:

- analyze production resources,
- select the farm's specialization and the correct type of correlation between the main and auxiliary types of activity,
- substantiate crop growing and animal breeding systems,
- develop technological maps,
- calculate production costs,
- determine income and profit.

The selection of the best type of production and the best way of using resources is a time and labor consuming process. It is obvious that these estimates can be easily made on a large farm by specialists who work there and can be rather difficult for a family farm. Anyway, at least two possible options out of the number of possible combinations of products, costs and technologies should be calculated in order to make the best choice. Calculations should be made for:

- different ratios of the relationship between the primary and secondary types of farm activity,
- different technologies (different types of livestock management, different crop rotations and agricultural regimes),
- different use of resources (machinery, labor and fertilizers).

For the activities that will be carried by the farm itself the following information is to be attached: a scheme of production flows, a list of machinery and equipment, a list of in-puts with names and addresses of suppliers and contract terms, projected cost and a list of equipment and machinery which may be required in the future. A projected increase or decrease of production should also be reflected in this section.

If there are plans for organizing a processing or a servicing enterprise, the document should include a procedure for procurement of goods, a system to track commodity stocks and a plan of projected storage facility.

When projecting crop yield and the sale price of products, it is better to be careful and to proceed from a high price for inputs. This will allow a margin to avoid financial problems.

6) Organizational structure

This section should contain information about the form of ownership, partners, main contributors, owners and management of the farm. The organizational structure of major enterprises should be also described. In addition, this section should include brief proposals for retraining employees and inviting external consultants.

7) Risk factors

Agricultural enterprises operate in an unstable and risky environment. It is important to foresee these difficulties and to work out a strategy for overcoming them. It is important to assess the risk level and to single out problems that the enterprise may face. Potential risks and possibilities for reducing them, weak points of the enterprise and ways of overcoming them are described in this section. The possibility of using new technology, increasing stability of agriculture and reducing the risk of crop loss may be included in this section. Risk factors of agricultural enterprises can be grouped in the following manner:

- risk of unfavorable weather conditions. Production plan should include two variants of the farm's sale and revenues: an optimistic one (if weather is normal) and a pessimistic one (if weather is unfavorable).
- the risk of animal and plant diseases,
- the risk of an unfavorable market situation - if the demand for the main types of products goes down or if the production of similar products by competitors grows considerably. Competitors, mistakes in marketing calculations, wrong production policy and choice of managers can all be potential problems.

To reduce risks, plans should be made for the production of extra products with a short production cycle.

The high risks in agriculture should be taken into account when determining the farm's specialization. Combining primary and secondary types of production increases the farm's stability and allows it to compensate for unfavorable changes in the volume of sale and revenues.

8) Financial plan

The financial plan is an integral part of the business plan. Cash availability, stability of the enterprise, sources and use of credits are analyzed in this section. As a result of these analyses the farm's loan pay-back schedule can be projected. The plan should provide an answer to the question about the level of sale and production necessary to make the farm profitable. The financial plan consists of three parts:

- **Aggregate projection for income and expenditure.** The expected volume of sale, the cost of sold products and other expenditures, taxes and net profit are included in this part. Development of a financial plan starts with the forecast of future sales volume. After that, it is necessary to estimate possible expenditures and to correctly distribute them by month.

- **Cash availability forecast.** It is meant to show the enterprise's ability to timely pay its bills on time. Due to the seasonal nature of production, revenues in agriculture vary by months. Also, sales proceeds are not immediately transferred to the farm's bank account. All this creates a need for short-term loans, required to pay salaries, inputs, etc. Cash availability forecast is based on a plan of cash revenues and payments, developed on the basis of an income and expenditure plan adjusted for possible changes. The most difficult part of developing cash availability forecast is to determine the volume of revenues by month. This forecast allows to estimate needs for credit resources.
- **Balance sheet forecast** reflects the enterprise's assets and liabilities, assets invested in the production development, either by the enterprise itself or by its partners, and undistributed profit. Development of the balance sheet forecast for the end of the first year begins after the projection for income and expenditure and the cash availability forecast are ready. When organizing an enterprise it is necessary to estimate when the enterprise will yield its first profit. For this purpose the point at which the farm will break even should be determined. This information is an estimate of the amount of money needed to provide for the farm's initial stages of operation.

9) Appendices

Business plan appendixes include documents and information that are not an integral part of the main text but that are referred to in the text.

A model production program business plan is given in Appendix 29.

GLOSSARY

Agricultural commercial organization (enterprise) (*selskokhoziaystvennaya kommercheskaya organizatsiya*)

A legal entity engaged in production, processing and sale of agricultural products, if the proceeds for the above activities exceed 70% of the total amount of proceeds from the sale of all the agricultural products produced by the organization.

Agricultural lands (*selskokhoziaystvenniye zemli*)

Arable land, pastures, hay fields, land with perennial plants and other lands used for agricultural production.

Associations or unions (*assotsiatsiya/soyuz*)

Organizations created by several commercial organizations for the purpose of coordinating their entrepreneurial activity and representing and defending common property interests. Associations and unions are non-commercial organizations.

Book value (*balansovaya stoimost*)

The value of assets shown in the balance sheet. Book value at the moment of acquisition of the asset is called original book value (*polnaya balansovaya stoimost*). Book value reduced for depreciation is called current book value (*ostatochnaya balansovaya stoimost*).

Business plan (*biznes plan*)

A plan of business activity that includes the financial grounds for that active. If a business plan is prepared for the purpose of obtaining credit should be supported by concluded agreements or contracts.

Certificate of property entitlement (*svidetelstvo na pravo sobstvennosti*)

A document certifying the person's (legal entity's) entitlement to a land or property share, or to a specific land plot or piece of property.

Charter capital (*ustavny kapital*)

Property, land, cash, securities and rights that have monetary value that are transferred by the founders to the legal entity for the start-up of its activity. Charter capital is a guarantee (security) for the partner organization in the event the enterprise incurs losses.

Contract/agreement (*dogovor*)

An agreement between two or more parties concerning the creation, amendment or termination of civil rights and obligations.

Payment contract (vozmezdney dogovor)

A contract under which a party must receive payment or other compensation for the fulfillment of its obligations.

Non-payment contract (bezvozmezdny dogovor)

A contract whereby one party is obliged to do something for another party compensation.

Preliminary contract (predvaritelny dogovor)

A written agreement under which the parties to the agreement oblige themselves to conclude in the future a contract concerning the transfer of property, fulfillment of work or rendering of services on the conditions provided for by the preliminary contract.

Contract on the right of ownership to property (o prave sobstvennosti na imushchestvo)

An agreement according to which an owner (or his representative) transfers his or her right of ownership to property or land to another party - a citizen or an entity.

Contract on the right of operative management (o prave operativnogo upravleniya)

An agreement according to which a federally owned enterprise effectuates its rights in regard to the property assigned to it within the limits established by law.

Contract on the right of full economic jurisdiction (o prave khozyaystvennogo vedeniya)

An agreement according to which an enterprise based on this right is not allowed to sell real estate allotted to it, to lease it, to mortgage it or to contribute it as a contribution to the charter capital of economic entities, societies or partnerships or to dispose of that property in any way without prior consent of the owner.

Contract of adhesion (dogovor prisoyesineniya)

An agreement certain conditions of which may be altered by one of the parties and other parties accepting these conditions by adhering to the contract as a whole.

Commercial organization (*kommercheskaya organizatsia*)

A legal entity pursuing the making of profit as the principal purpose of its activity.

Company name (*firmennoye naimenovaniye*)

Full name of the organization, including its logo and trade marks.

Consumer cooperative (*cooperativ potrebitelskiy*)

A voluntary association of citizens and legal entities formed on the basis of membership for the purpose of satisfying economic needs of participants. The association is capitalized with the contributions of the members.

Deed of gift (*dareniye*)

An agreement by which one party transfers the ownership of property to another party without compensation.

Divisional balance sheets (*razdelitelny balans*)

An accounting document confirming the rights of succession with regard to all the assets of the reorganizing enterprise and its liability towards the creditors and debtors.

Draw up inventories (*inventarizatsiya*)

Compare the balance sheets of a legal entity with the available property.

Engineering infrastructure (*inzhenernaya infrastruktura*)

- intra-farm roads;
- water, power, gas supply systems, water purification systems, recycling facilities, telephone lines;
- maintenance enterprises.

Fixed asset book (*inventarnaya kniga*)

Similar to Fixed Asset Card. At some enterprises they keep all information pertaining to fixed assets is kept not in separate cards, but in books. Each asset is registered on a separate line in the book. At some large enterprises assets are registered both by the card system and in a book.

Fixed asset card (*inventarnaya kartochka*)

Document in which all information about a fixed asset has been recorded. Each asset should have its own card. This card is written out at the moment of acquisition of the asset. During the use of this asset all fluctuations in its value, physical condition, location, etc. must be recorded on the card.

Fixed assets list (*inventarny spisok*)

Lists all movements and transfers of fixed assets. Reasons for those movements and transfers are recorded for each asset in accordance with the asset card and/or book.

Fixed assets register (*inventarnaya opis*)

Register of all fixed assets that must be inventoried. This register is completed during the inventory process. Original book value and estimated value at time of inventory is also recorded.

Founding documents (*uchreditelniye dokumenty*)

Charter and/or founding agreement of a legal entity that must be registered by a special department of the local administration and which determines the name of the legal entity, its location, method of management, terms and methods of distributing profit and losses among the participants, procedures for leaving the entity. The founding documents also contain other data required by the Russian legislation.

Amendments to the founding documents become valid for third persons from the moment of their state registration.

General meeting (*obsheye sobraniye*)

Highest management body of a legal entity (society or cooperative), consisting, as a rule, of the workers of the enterprise or organization.

Hectare-point (*ballo-gektar*)

A characteristic of a land plot, reflecting both the size of the plot and the quality of its land. The value of a plot in hectare-points equals its size in hectares multiplied by the value of land in points per hectare. The value of land in points is usually determined by Roscomzem branch offices and is stated on the land use maps of the reorganizing farm.

Housing fund (*zhilishchny fond*)

The totality of all the living premises, irrespective of forms of ownership, including houses, special premises (hostels, asylums, hospices and so on), flats, living quarters offered to employees for the term of service and other living premises.

The housing fund can be owned by state or municipalities, private citizens or be in common ownership.

Privatization of the housing fund

A free transfer of living premises to the ownership of tenants.

Privatization of the housing fund is carried out at the discretion of tenants, that is at their own volition.

Individual entrepreneur (*individualny predprinimatel*)

A citizen engaged in entrepreneurial activity (the purpose of which is to derive profit) without the formation of a legal entity.

A citizen is deemed an individual entrepreneur from the moment of State registration.

The heads of peasant farms effectuating activity without the formation of legal entities are deemed entrepreneurs from the moment of State registration of peasant farms.

Intra-Farm Auctions (*vnutrikhoziaistvenny auktsion*)

One of the methods of distribution of land and property during farm reorganization.

Participation in the auction is open solely to land and property share owners on the reorganizing farm (persons or newly formed enterprises).

The legal tender at the intra-farm auction is either hectare-points or share rubles available to the auction participants.

Inventory statement (*akt inventarizatsii*)

A final document based on inventory. Final statements are prepared for fixed and current assets. The main purpose of these documents is to record assets that exist in reality at their true value, i.e. without regard to asset values recorded in the financial books of the enterprise.

Land share (*zemelnaya dolya*)

A part of land of an agricultural enterprise to which a member of the enterprise is entitled according to Russian legislation.

A land share entitles one to a land plot in kind.

Only agricultural lands transferred to the enterprise can be divided into shares.

The size of land shares is in hectares and hectare-points, which reflect the quality of land. The size of land shares shall not exceed the average size of land

plots transferred free in each raion. The size of land shares depends on the quality of land on the farm

Lease (*naym*)

An agreement by which the lessor obligates himself to temporarily transfer to the lessee land and property for the lessor's control and use in exchange for payment.

Legal-entity (*yuridicheskoye litso*)

An organization that assignable property in ownership, economic jurisdiction, or operative management and is liable for its obligations in connection with such property. A legal entity acquire and effectuate property and nonproperty rights, bear duties in its own name, and act as plaintiff or defendant in court. Legal entities must have an autonomous balance sheet or estimate.

Legal entity forms (*organizatsionno-pravoviye formy*)

Different types of organizations (enterprises) created for commercial, social, public, charitable and other activity, in particular: partnerships, economic societies, cooperatives, foundations etc.

Letter of Intent (*protokol o namereniyakh*)

A document specifying the intentions of the partners with regard to further cooperation and determining the participants, amount of each participant's share in the charter capital, etc.

Liability (*obiazatelstvo*)

A certain action a debtor is obligated to perform for the benefit of a creditor (transfer of property, performance of work, payment of money), or a refrainment from a certain action. In his turn the creditor can demand that the debtor fulfill his duty.

Lots (*loty*)

Assets offered for distribution during farm reorganization by auction or by any other means of distribution among newly created organizations and individual owners. Lot formation is carried out by the Intra-farm Reorganization Commission on the basis of the farm's particular circumstances.

*Land lots (*zemelniye loty*)*

Land plots offered for distribution, into which agricultural lands transferred to the enterprise have been divided.

*Property lots (*imushestvenniye loty*)*

Integral, separate units of property offered for distribution, that are formed on the basis of fixed assets, as well as property units formed out of current assets. Property lots can include one piece of property (a tractor, a truck etc.) or several pieces of property (a farm with its infrastructure, a repair shop etc.)

Non-commercial organization (*nekommercheskaya organizatsia*)

A legal entity that does not have the making of profit as the principal purpose of its activity.

Order (*prikaz*)

A directive of a higher official (manager, director) to the workers which is mandatory for execution. Usually in written form.

Organization (enterprise) (*organizatsia*)

See Legal entity

Peasant farm (*krestyanskoye fermerskoye khozyaistvo*)

a voluntary cooperation of citizens for the purpose of production, processing and marketing of agricultural products.

A peasant farm is not a legal entity. It is managed by the Head of the peasant farm, who is deemed an entrepreneur from the moment of State registration.

Property of a peasant farm is common property of its members, unless otherwise provided for by legislation or by agreement.

Privatization (*privatizatsiya*)

A method of transfer of state or municipal property to private owners: citizens or legal entities can obtain state or municipal assets free or redeem them.

Land and property are subject to privatization on collective and state farms.

Production cooperative (*cooperative proizvodstvenny*)

A voluntary association of citizens on the basis of membership for the purpose of joint production or other economic activity, based on their personal labor participation and combining of property share contributions.

Property (*sobstvennost*)*State property*

The property and/or land belonging to the Russian Federation by right of ownership (federal property), property belonging to the subjects of the Russian Federation (republic, krai, oblast, city of federal importance, autonomous republic, autonomous regions) by right of ownership (property of the subject of the Russian Federation).

Land and other natural resources that are not owned by citizens, legal entities or municipal structures are state property.

Municipal property

The property and/or land belonging to cities and towns as well as other municipal structures by right of ownership.

Local budget funds and other municipal property that have not been assigned to municipal enterprises and institutions are municipal treasury of the appropriate city or village or any other municipal structure.

Common property

Property and/or land belonging to two or several persons.

Common share property

Property and/or land in common ownership of citizens or legal entities (the share of each of them has been determined).

Joint property

Property and/or land in common ownership of citizens (the share of each of them has not been determined).

Property share (*imushchestvenny pai*)

A share of a farm member in the farm's common property. A property share entitles its owner to a property unit in kind, to a piece of equipment, building or other property of a corresponding value.

The property share size of a farm member depends on the member's labor contribution and more specifically is determined with regard to his length of service, average annual wage or qualification quotient.

Property shares are determined in share-rubles.

Property share fund (*imushchestvenny payevoy fond*)

The value of the part of the farm's property earmarked for distribution. The property share fund is the basis for the calculation of property shares.

Protocol (*protokol*)

A document which specifies the intentions of the partners with regard to further cooperation, states the present situation or formulates a decision on a certain issue.

Re-evaluation cost (*vosstanovitel'naya stoimost*)

Value of a similar asset that may replace the certain asset as for the date of inventory. This value is close to the market value of the fixed asset.

Reorganization of a legal entity, organization, enterprise (*reorganizatsiya yuridicheskogo litsa, organizatsii, predpriyatiya*)

The process of organization's break-up into smaller legal entities, by means of secession of new independent structures, or, on the contrary, creation of larger enterprises by means of merge, acquisition or transformation into another legal form.

Sales (*torgi*)

Sale of land or property organized through an auction or tender (*konkurs*)

The bidder offering the highest bid wins the auction, whereas the tender is won by the bidder offering better terms.

Share rubles (*payevye rubli*)

Index of property share value, calculated on the basis of property share fund value and labor inputs of the reorganizing farm members (see methods of property share calculation).

Socially vulnerable categories of population

Citizens entitled to social services on a priority basis, including:

- pensioners;
- working and non-working invalids of all groups and categories;
- families with disabled children under 18 years of age;
- single mothers, large families, single parent families with children under 18 years of age;

- pregnant women and nursing mothers;
- registered unemployed persons;
- registered refugees, and other persons in extreme situations;
- war veterans and persons having the same status;
- labor veterans etc.

Social sphere facilities (*obiekty sotsialnoy sfery*)

- educational institutions (day care centers, schools, training centers and farms etc.);
- medical institutions (medical centers, out patient clinics, hospitals, drug-stores etc.);
- cultural institutions (clubs, houses of culture, libraries etc.);
- trade institutions;
- public catering facilities;
- daily services and hygiene facilities (public baths, laundries, repair shops etc.);
- housing.

State Register (*yediny gosudarsvenny reestr*)

A list of all the legal entities and individual entrepreneurs registered in the RF. The UST contains information on the date of registration, address of the enterprise, founders and the size of charter capital.

State registration (*gosudarstvennaya registratsiya*)

A process of making an entry for a legal entity or an individual entrepreneur in the official books of the appropriate state authorities specifying data about founders, the size of charter capital, address of the enterprise and so on

Transfer statement (*akt priyema-peredachi*)

A document that confirms the transfer of fixed and current assets from the transferring party to the accepting party and signed by both parties.

Landlord (lessor)

A person or an organization who leases land or property to a *tenant (lessee)* for payment. Production, produce or other income received by the tenant from the use of rented land or property is considered the tenant's own property.

Unitary enterprise (*unitarnoye predpriyatiye*)

A commercial organization that is not endowed with the right of ownership to property allocated to it by the owner. The property of a unitary enterprise is indivisible and may not be distributed according to contributions (shares). Only state and municipal enterprises may be created as unitary enterprises.

A unitary enterprise is created in the event of transfer of land or property by the municipality to a group of persons who have agreed to set up and work within an enterprise on the basis of this property. (See also Contracts).

Verification (comparison) statement (*slichitelnaya vedomost*)

A document is based on the results of the inventory. It records surpluses or deficits both in quantity and in value of each fixed asset registered during the inventory process.

