

RONCO Consulting Corporation

**Manual for Implementation of
Agricultural Land Sharing and Farm
Restructuring
in Ukraine**

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This revised version of the Manual, originally released in September 1996, contains new sections on issuing state deeds to private land ownership, distributing property in kind, restructuring under various levels of debt and formation of alternative business forms including open and closed joint stock companies, limited liability companies and individual private farmers. A separate Legal Annex is provided which contains documents necessary to complete all phases of farm restructuring and land reform.

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We hope that this Manual will provide useful guidance and stimulation to those involved in implementing agricultural reform in Ukraine.

Conrad F. Fritsch
Team Leader
Agricultural Land Share Project
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SECTION 1

OVERVIEW OF THE LAND SHARING AND FARM RESTRUCTURING PROGRAM

Agricultural Land Sharing and Farm Restructuring in Ukraine

1. OVERVIEW OF THE LAND SHARING AND FARM RESTRUCTURING PROGRAM

1.1. The Land Sharing and Farm Restructuring Program

The Land Sharing and Farm Restructuring (LSFR) Program described in this Manual is designed to introduce, within the context of existing Ukrainian law, basic structural change in land and property ownership rights and establish management/employee/stockholder/private farmer relationships which are common in western market economies. The program is designed to rapidly put in place, on a systematic basis, new forms of agricultural land and property ownership and compensation patterns, promote development of agricultural land markets, and introduce new agricultural management practices providing the structural flexibility needed to adapt farm resource availability and use to changing domestic and world market conditions. The Program should be viewed as the first phase of a multi-phase farm and farmland restructuring process.

This Manual describes, in detail, the activities and supporting documentation needed to issue and use land share certificates and stock/property share certificates, issue state deeds to private land ownership, distribute property in kind, conduct and interpret farm financial analyses, and reorganize company ownership structure. The various sections of the Manual are targeted to different audiences, including farm management, Farm Restructuring Commissions, members of the farm community (farm workers, pensioners, and social sphere workers), professionals involved in implementation of the Program, and government officials.

The Agricultural Land Share Project is financially supported by USAID. Ukrainian legal, professional, and technical support staff in Kyiv and in Sumy, Kharkiv, Mykolayiv, Kherson, Dnipropetrovsk, Ternopil, Lviv and Volyn Oblasts were heavily involved in developing and implementing procedures described in this Manual.

1.1.a. Implementor (Change Agent)

The initial decision to implement the LSFR Program rests with farm leadership, and with the workers and pensioners who are eligible to share ownership in land and non-land assets. However, completing the process requires specialized legal and other technical skills usually not resident on Collective Agricultural Enterprises (CAEs). A farm embarking on the restructuring process could hire individual experts - attorneys, agricultural economists, financial specialists, etc. - with technical expertise to carry

out the detailed analysis needed to complete the process. Alternatively, the process could be guided by a Ukrainian organization or agency possessing appropriate professional and technical staff. At this time the latter approach is recommended because the process is designed to convey new concepts and analyses not yet familiar to farm leadership. Such an organization could be:

- an oblast-level government agency such as the Department of Agriculture, or the State Land Resources Committee;
- a university, private sector organization, or government affiliated Farm Restructuring or Privatization Center; or
- a Ukrainian law firm with appropriate technical specialties.

Individuals guiding the restructuring process should have appropriate teaching and negotiating skills and be able to easily gain the respect of farm leaders and workers. They should be thoroughly familiar with the contents of this Manual, be able to coordinate the work of the outside specialists who are needed to conduct technical activities associated with calculating land shares and property inventories, and they should have access to computer facilities needed to process the entitlement and inventory lists, calculate the individual worker salary histories necessary to establishing property share values, and prepare farm financial and business analyses.

1.1.b. Training/Information Campaign

The LSFR Program described in this revised Manual has been implemented on more than 70 farms in seven oblasts and contains new material on legal structures, issuing state deeds to private land ownership and distributing property in kind. This Manual can serve as a framework for educating the various oblast, raion, and farm level participants, and other specialists involved in program implementation. In this way, the ALS Project can provide technical support to government specialists responsible for managing agricultural and land reforms and effect a more efficient transfer of knowledge and skills to key individuals.

In conducting a thorough training and information campaign, it is necessary to differentiate between the informational and skill enhancement needs of the various participants in the process. Doing so will ensure that the training achieves its maximum impact and that the LSFR process is implemented in the most effective manner possible. There are four principal groups at which these efforts are directed: farm restructuring commissions, farm management teams (farm manager, chief economist, chief accountant, chief agronomist, chief animal breeder), ordinary members of the farm, and government officials.

Included in each section of this Manual are text boxes which detail the training and outreach efforts necessary for each aspect of the Project. Such text boxes identify the

target audiences and develop training approaches for each.

1.2. Enabling Environment

The LSFR Program is conducted within an evolving legal and institutional infrastructure. Since 1992, Ukraine has moved toward establishing a market-based farm economy by denationalizing land operated by former collective farms. At present, more than 99 percent of Ukraine's collective farms have been reregistered as non-state entities.

The key piece of legislation in this area is the Land Code of 1992, which sets out the framework for two types of non-state agricultural land ownership:

- **Private Garden Plots:** by 1992, persons associated with the former collective farms, including those working in the social sphere (teachers, health care workers, etc.) could receive ownership rights to small land parcels ranging from 0.6 to 1 hectare. This land is used mostly to meet the food needs of farm families, though the surplus can be sold on the market. This land can be bought, sold, and leased.
- **Collective Agricultural Enterprises:** by 1996, almost all arable land not previously allocated to various State Reserve Funds, had been transferred to the farms operating the land, with workers, managers, and pensioners identified as collective owners. These individuals can exercise their potential rights to own land as individuals only after land share certificates have been formally issued.

The Law of Ukraine #2114 -XII "On Collective Agricultural Enterprises" of February 14, 1992 provides the framework for transferring non-land farm assets to eligible workers, managers, and pensioners. These provisions establish the initial owner equity (capital) necessary to start farming as individuals, to form a new private sector company, and to implement subsequent farm restructuring. As is the case with the land privatization process, additional actions are needed for individuals to fully exercise their latent asset ownership rights and for managers to respond to changing market price signals.

Since 1992 a series of laws, presidential decrees, and government regulations have been enacted to promote land and property sharing and large farm restructuring. This Manual does not include the complete text of legal documentation providing the basis for described procedures and interpretations as they are subject to revision and could become outdated within a short period of time. Instead, references to the supporting documentation are cited or the key portion of the relevant text is reproduced. In cases where the law is unclear, due either to contradictions in existing statutes or where the law is silent on the issue at hand, procedures developed describe a course of action least likely to result in adverse court rulings. As reference to those who want to review the legal framework in greater detail, the primary reference documents used in this Manual are listed in a separate *Legal Annex* to this Manual.

1.3. Land Shares and State Deeds to Private Land Ownership

At present, all eligible workers, managers, and pensioners resident on Collective Agricultural Enterprises have equal rights to ownership of land operated by the farm. These individuals first receive a land share certificate which represents the right to receive an individual land parcel from the lands held under collective ownership. The certificate can also be sold, traded, transferred, bequeathed, inherited, and mortgaged. As yet, procedures to implement these latter provisions are not fully in place. The land share certificate forms the basic building block for future development of land markets and the formation of efficient agricultural land units. Land certificates can also be converted into state deeds to private land parcels either on a case by case basis or by simultaneously issuing titles to all members as part of the farm restructuring process.

The amount of land represented by the land certificate depends on the ratio of available land to the number of eligible farm members. In western Ukraine, this may be as low as 1.5 hectares. In eastern, central, and southern regions, it can be as high as 10 hectares. The national average is between 3 and 4 hectares, before adjustment for land quality. Generally, the land parcel associated with the certificate is too small for effective commercial production of the crops for which Ukraine has a comparative advantage. To remedy this, certificate holders can pool shares or privately owned land parcels and lease this land to other individuals better able to support commercial production.

1.4. Farm Restructuring and Property Shares

Initial restructuring of the former collective farm into the non-state sector Collective Agricultural Enterprise did little to alter farm decision making processes or worker/management relations, nor did it provide internal incentives necessary to improving production efficiencies. New foundation documents for legal business structures are needed which clearly establish rights, responsibilities, and compensation associated with ownership and management of capital and land resources while not detracting from basic contractual employee rights. This can be done under existing legislation and procedures, and model documents for doing so are provided in this Manual.

Similarly, the process of transferring ownership of non-land property assets to individuals must be completed. Unlike land sharing, legislation guiding the property sharing process provides that these assets be distributed according to quality and quantity of labor provided. That is, workers with longer employment histories and higher relative wages or salaries are to receive a larger share of the property assets than are workers with shorter length of service and lower wages or salaries. Property share certificates can be converted directly to owner equity in the existing enterprise or in a new company or distributed in kind to individuals and new legal entities formed out of the restructured farm. Once converted to owner equity the basis for determining returns to capital and for future asset restructuring is present. This can be done under existing legislation procedures, and model documents for doing so are provided in this Manual.

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SECTION 2

COORDINATING THE PROGRAM

Agricultural Land Sharing and Farm Restructuring in Ukraine

2. COORDINATING THE PROGRAM

The discussion in this section provides a brief description of each activity and its relationship to the other components. Sections three, four and five provide detailed technical information needed to complete activities for each component.

2.1. Property, Land and Farm Restructuring: The Components

The LSFR Program includes completion of seven separate components:

- training and information workshops with farm members and with change agents;
- issuing land share certificates;
- issuing property share certificates (or certificates of stock¹);
- forming new farm organizations;
- conducting farm financial analysis and business plans;
- issuing state deeds to private land ownership;
- distributing property in kind.

At the farm level the LSFR Program is coordinated by the Farm Restructuring Commission (FRC) which reports to the Farm General Assembly (FGA).

Activities associated with each component can generally be carried out independently from activities associated with each of the other components as long as there are enough people to do the job.

¹Certificates of Stock are issued if the farm is restructured as a Joint Stock Company, otherwise Property Share Certificates are issued. See Section 3.2.

Change Agent Training Module

To start the LSFR program Land Share Project technical staff will provide a three day training session with change agent organization attorneys, economists and information staff at the start of Program activities. Topics include: 1) the LSFR process, 2) the FRC role, 3) verification of property and land share lists, 4) issuing property (stock) and land shares, 5) the rights of property (stock) and land share holders, 6) issuing state deeds to private land ownership, 7) distributing property in kind, 8) characteristics of the Model Constituent documents, 9) principles of farm financial analysis, 10) introduction to use of the farm financial analysis computer model, 11) training and information programs used by change agent staff with FRCs, farm management and rank and file workers and pensioners. Training materials to be used by change agent staff will be distributed at this workshop. Kyiv Project staff will be available to address questions as they arise during program implementation.

2.2. Starting the Process

The land sharing and farm restructuring process is started by the outside change agent holding three separate meetings, one each with:

- the farm management team;
- a small group of farm members and farm opinion leaders; and
- with the farm General Assembly.

Meeting With the Farm Management Team: The initial meeting is held with the farm manager and his management team. At a minimum this should include Deputy Manager, the Chief Accountant and the Chief Economist. The meeting has three purposes:

- discuss the basic program components (see Table 2.1);
- set the time and date for an information meeting with a selected group of 30 to 50 farm leaders and members; and
- set the time and place for a General Assembly meeting to approve ALSP restructuring and form the Farm Restructuring Commission.

Meeting with Farm Members and Opinion Leaders: The purpose of this meeting is to discuss the program components address questions. It should be held within a few days after the initial meeting with the primary farm management team and covers much the same material. A cross section of farm leaders and members should be invited including all brigade leaders and technical specialists and several representatives of workers and pensioners. At this meeting the same issues are addressed as at the meeting with the farm manager and his core staff. Since the farm manager and other key staff have already been exposed to the program they should take an active part in leading the discussions.

Individuals invited to this meeting are expected to discuss the program with their co-

workers and friends thereby disseminating basic information to members who will be attending the General Assembly meeting.

Farm General Assembly (FGA) Meeting: The purposes of the FGA meeting is to:

- approve the land share and farm restructuring process; and
- establish the Farm Restructuring Commission (FRC) which takes responsibility for guiding and managing the on-farm process.

The FGA meeting to set up the FRC as authorized under the Law on Collective Agricultural Enterprises should be held within a week of the initial meeting with the farm manager and senior farm management staff. It is important that several worker and pensioner representatives be included on the FRC so that membership not be limited to just the formal farm leadership staff. Including worker and pensioner representatives ensures that the full range of member concerns can be actively addressed by the FRC. The FRC coordinates all land sharing and farm restructuring activities including information workshops to inform farm members about the program and address questions as they arise. The FRC recommends to the FGA the business organizational form into which the farm should be restructured. Although the FRC should arrive at its recommendation with the assistance of the outside change agent, the recommendation itself should be the decision of the FRC. The FRC then has the responsibility of explaining and defending the merits of its recommendation to the members of the FGA.

Training Module

After General Assembly approval the following training and information activities take place:

Farm Financial Analysis

The change agent economists conduct a two day session with farm management. Topics addressed are identified and discussed in Part Five , Activity Two. Several additional meetings with farm management will be necessary to gather additional data and to report back on results obtained including distribution of the reports generated for each farm.

Farm Restructuring Commission

The change agent legal counsel and the training and information specialist conduct a one or two day training session with FRC members. Topics covered are: a) discuss schedule of events as contained in Table 2.1, b) verifying land and property sharing lists, c) explaining the process of issuing land and property shares, d) forming a new legal organization, e) rights of land and property share owners, f) issuing state deeds to private land ownership, g) distributing property in kind, h) scheduling information workshops to discuss the above issues with employees and pensioners.

Several additional meetings with the FRC will take place over the course of the program as needed to ensure that program activities are accomplished on schedule.

Employees and Pensioners

The change agent training and information specialist conducts formal and informal meetings, as needed, with influential employee and pensioner representatives to explain and discuss the program. Formal meetings can be organized through the FRC.

2.3. Integrating the Components

Table 2 identifies the major activities associated with each component, provides an estimate of the amount of time required for completion of each activity and indicates the sequence of approval by the FRC and by the FGA, when required.

2.3.a. Information Workshops

The FRC holds a series of workshops and meetings with farm members to identify and discuss program objectives and activities and to identify and discuss how the program affects members. Information for distribution at these meeting is provided in Sections Three and Four.

At least two or three informational meetings are recommended. Meetings should be scheduled so that members have sufficient time to discuss point informally among themselves and with individual FRC members. Additional follow-up meetings on these topics may be scheduled as needed. The informational meetings address the following topics:

- issuing land share certificates and state deeds to private land ownership (use materials in Manual Section 3.1):
 - o verifying entitlement lists;
 - o how land shares are calculated and used;
 - o issuing land share certificates;
 - o rights associated with owning land share certificates;
 - o responsibilities associated with owning land share certificates;
 - o converting land share certificates to state deeds to private land ownership;

- issuing property shares and distributing property in kind (use materials in Manual Section 3.2); and:
 - o verifying entitlement lists;
 - o how property shares are calculated and used;
 - o issuing property shares (certificates) ;
 - o rights associated with owning property share certificates;
 - o responsibilities associated with owning property share certificates;
 - o distributing property shares in kind;

- legal farm restructuring and forming new business entities (use materials in Manual Sections 4 and 5).

The first informational meeting with farm members should be held about a week after formation of the FRC and provide a basic understanding of the restructuring process. By this time the Oblast Restructuring Team has already held several meetings with farm leadership and member representatives. Informal discussion of this material will have already taken place in some degree so the topics will not be completely new. However, the first informational meeting should not take place until the FRC members have a clear understanding of the process and the steps involved. If property and land shares have not yet been issued an explanation should be provided

of what they are and how they are to be issued. If land shares have been issued the discussion can concentrate on using them either for leasing or converting them to state deeds of private ownership after which land can be used for private farming or leased to someone else. Similarly, if property shares have been issued the need for and the process associated with distributing property in kind can be discussed.

The second informational meeting should be held after members have had a chance to informally discuss information provided at the first meeting. FRC members should take the lead in holding individual or small group meetings with workers and pensioners so to clarify the process. Topics addressed at the second meeting should seek to respond to the concerns raised by members.

After the first two meetings it can be expected that members who want to receive state deeds to individual ownership and those wanting to form new organizations and lease land from others will have been identified. This may not happen in all cases but farm leadership should be supportive of individuals wanting to become private farmers. These individuals should be encouraged to work directly with the FRC which should assist in developing appropriate options. Economists from the Oblast Restructuring Teams should carry out farm financial analyses to verify the commercial viability of the proposed new farming units.

An informational meeting on formation of new legal entities should not be held until the topic has been thoroughly discussed by the FRC. This meeting is most likely to be held five or six weeks after formation of the FRC and is designed to publicly introduce the new organizational structures likely to be formed from the existing one. In many cases it will be simply the restructuring of a CAE into a JSC or limited liability company, but in other cases a number of people may want to become private farmers and to lease land from others. In this case each should have the opportunity to express his or her views to the assembled membership. It is important to note that this meeting is not a formal sitting of the General Assembly but simply an informational meeting to inform the membership of the current situation. A recommended sequence of meetings and discussions is provided in Section 2.3.d.

2.3.b. Issuing Land Share Certificates and State Deeds to Private Land Ownership²

Land Share Certificates can be used to convey rights of land ownership to the certificate holder. All work required to issue land share certificates can normally be completed within 6 weeks after FRC formation. Five technical steps are required:

- verify entitlement lists;
- conduct boundary survey;
- calculate cadastre hectares and land values;

² Manual Sections 3.1 and 3.2 provide detailed technical discussion of topics addressed in this section.

- issue certificates; and
- issue state deeds to private land ownership.

Verify Entitlement Lists: Verification of land sharing entitlement lists can be normally completed in less than one month, if a state land Akt (deed) of collective land ownership has been issued. In general, employees currently working on the farm and former employees still residing on the farm as of the date of issuance of the Collective Land Akt (deed) are owners in common to land described by the deed, and thus eligible to receive an individual land share certificate. Recording and printing of lists can be done on the farm or by the change agent managing the LSFR program. Completion of entitlement lists can be facilitated by use of computer. The farm is responsible for preparing the list.

Conduct Boundary Survey: Land held by the farm under the existing common ownership deed represents that part of the arable land under the original collective farm that was not transferred to the state reserve. The deed was issued without performing a boundary survey to verify the exact lands within its scope. As a result, a new boundary survey is needed to certify the lands subject to potential distribution using land share certificates. This survey should take no more than three weeks. The State Committee on Land Resources at the oblast level is responsible for completion of the boundary survey and covering associated expenses.

Calculate Cadastre Hectares and Land Values: Land is shared equally among all eligible farm members, after adjustment for soil quality and slope. Total hectares available for potential distribution using land share certificates are known after the boundary survey is completed. The process of incorporating soil quality and land slope yields a figure called a cadastre hectare. Procedures for calculating cadastre hectares and land values follows methodology contained in the Cabinet of Ministers regulation No. 213 of 23 March, 1995 as amended. A discussion of the procedure is found in Annex A. Cadastre hectare values are calculated for each field and averaged over all arable land included in the common land deed. Calculations are more time consuming for hilly land with differing soil types than for level land of consistent soil type. Generally work can be completed on a 5,000 hectare farm in about 10 days using a team of 3 professional surveyors. The State Committee on Land Resources at the oblast level is responsible for completion of the boundary survey and associated expenses.

Issue Certificates: The State Land Resources Committee at the National level is responsible for printing and distributing numbered, blank Land Share Certificates to oblast representatives. Completed certificates are issued and registered at the Raion Administration. A record is also kept at the farm. Computer programs are available at many Ukrainian land survey organizations to fill in common information needed for all certificates to be issued on each farm. Adding names of each entitled owner is usually done by hand but can also be done by computer. Names of persons receiving land share certificates are registered on the farm and with the Raion Administration.

Issue State Deeds to Private Ownership: State deeds to private ownership are issued by the Raion Administration after appropriate land survey work is completed. Farm members may withdraw their land from the collective deed in order to begin their own farming operations or to lease land to others who will operate it for them. A state deed to private ownership will contain the exact geographic coordinates needed to identify the land ensuring that legal ownership is preserved. In cases where one or more members want to begin larger scale farming operations they can make arrangements to lease complete fields by concluding leasing contracts with all people owning land in the desired fields. A Land Distribution Subcommittee of the FRC is appointed to develop rules and manage the issuance of state deeds to private property. Alternatively, the General Assembly may appoint a separate Land Distribution Commission. The procedure for issuing state deeds to private ownership is found in Section 3.2.

2.3.c. Issuing Property Share (Stock) Certificates and Distributing Property in Kind³

The primary purpose of the property share certificate is to authorize individual property value shares which can be converted into foundation capital in a new business organization. National and oblast level legislation and regulations governing issuance of property share certificates generally take the form of advisory rather than required procedures. Seven technical steps are required to issue property shares:

- verify entitlement list;
- calculate individual worker salary history;
- update property inventory and assign current values;
- calculate net asset value;
- calculate individual worker property share;
- issue property (or stock) certificates; and
- distribute property in kind.

The farm is responsible for all work associated with the above activities. The Law on Collective Agricultural Enterprises delegates, to the FGA, a great deal of authority for determining individual eligibility for property sharing and calculating salary histories needed to determine property shares. Consequently, there is a broad scope for court challenges by workers believing they were unjustly excluded from participation or salary histories were incorrectly determined. Legal counsel should be retained to anticipate and address these problems. The FRC appoints a Property Share Subcommittee to coordinate all property sharing activities, including distribution of property in kind. Alternatively, the General Assembly may appoint members to a

³ Manual Sections 3.3 and 3.4 provide detailed technical discussion of topics addressed in this section.

Property Commission to manage the process of distributing property in kind.

All work required to issue property share certificates can normally be completed within 6 weeks after FRC formation. However, an additional two to three weeks should be allocated to allow sufficient time for eligible members to sign the certificate authorization list (see Section 3.2.c).

Verify Entitlement Lists: Verification of entitlement lists can be normally completed in less than one month but may require legal counsel to resolve eligibility issues. Recording and printing of lists can be done on the farm or by the change agent managing the LSR program. Completion of entitlement lists can be facilitated by use of computer.

Calculate Individual Worker Salary History: Property share calculations are based on individual length of service and salary levels during the life of the company and in some cases, of predecessor companies. Unlike land sharing, where all eligible individuals share equally in the land being distributed, individuals with longer periods of service and higher earnings receive a greater property share than those with shorter employment histories and lower earnings. Calculation of salary histories is complicated by the fact that all collective farm workers received compensation in kind prior to 1966, some wage and salary records have been lost and severe inflation since 1991 has eroded the purchasing power of earnings received in earlier periods. Procedures to address these problems are presented in Section 3.3.b and Annex B.

When all individual salary histories have been calculated they are divided by the sum of all individual salary histories to obtain the worker salary share coefficient used to determine the property share monetary value.

Update Property Inventory and Assign Current Values: An updated property list can be completed within 4 weeks after FRC formation. The inventory list of all farm equipment and buildings must be updated. Item name, purchase price, date of purchase (or commissioning in case of buildings), approved depreciation rate, percent of depreciated value and current book value adjusted for inflation are kept on card files. Summary information is usually kept in an asset register book. Since inventory values under the command economy did not have the same use as in market economies, inventory lists are often out of date. Consequently, they must be carefully reviewed and updated for accuracy. It is recommended that property values used for calculating property shares represent depreciated book values adjusted for inflation.

When recalculating inventory values all social objects (schools, social clubs, etc.) used for enjoyment of the community at large must be removed from the list of business items. Roads used exclusively by farm vehicles should remain as farm assets but others should be removed. If possible non-farm assets should be transferred immediately to the public sector. If this is not possible they should remain on a separate farm list and not be included with property valued for sharing purposes.

Preparation of new asset registers can be facilitated by keying all data on computer spreadsheet lists. The Property Share Subcommittee takes responsibility for collection, verification and updating the asset register. Since most farms do not have computers the agency or company managing the LSFR program should take responsibility for computer summary and analysis. Professional appraisal companies may add this service in the future.

Calculate Net Asset Values: Current value of short term production assets, cash on hand and accounts receivable are calculated just before land share certificates are issued. This total is added to the value of long term (inventory) assets and represents gross asset value for property sharing. Current debt and accounts payable are calculated and subtracted from gross asset value. The result is the net asset value for property share purposes.

Calculate Individual Worker Property Share: The individual worker monetary property share is derived by multiplying the net asset value by the individual worker salary share coefficient.

Issue Certificates: If the company is to be restructured as a modern closed AJSC certificates of stock are issued after the new AJSC has been registered. In the event that the company is not restructured into an AJSC, a property share certificate is issued. These certificates are issued through the FRC and are registered by the company which maintains a list of all stockholders and the par value of the stock issued.

Distribute Property in kind: When new farming units are created from the existing CAE it is often necessary to distribute some property in kind to these new entities. To preserve the internal integrity of the process persons or legal entities who do not hold property shares should not be allowed to participate in the distribution. All property to be distributed must be divided into physical lots with the initial value of each lot equal to the value appearing on the asset register used to determine the total value of farm property. The procedure for issuing property in kind is found in Section 3.4.

2.3.d. Forming a New Legal Business Organization⁴

Forming a new legal business organization is one of the most important components of the LSFR Program. The decision to restructure occurs after 6 weeks of discussion by the FRC, farm leaders and the farm membership. Based on these discussions, a recommendation is formulated by the FRC and passed on to the FGA for approval by vote of the farm membership.

At least two formal meetings are held between the LSFR program representative, the

⁴ Manual Section 3.4 provides detailed technical discussion of topics addressed in this section.

FRC and the farm manager and LSFR legal counsel. Other meetings and individual discussions should be held as needed. A suggested sequence of meetings and discussions follows:

- The initial FRC meeting should be held immediately after its formation and introduce alternative business forms. All realistic alternatives should be discussed including the right of individuals to form new individual farms and lease land from other members. Model foundation documents of different business forms should be reviewed. The farm manager, chief specialists and members of the FRC should attend.
- Informal individual or small group discussions about the model constituent documents should be held between the LSFR Program representative, legal counsel and the farm manager and other leaders. At these meetings individual wanting to start their own farms or form new business organizations should attend. Financial analyses should be conducted, as needed, to determine the commercial viability of developing new farms.
- A second meeting should be held within two weeks after FRC formation to address issues and concerns that have arisen since the first meeting. Initial results from the farm financial analysis should be introduced at this time as a basis for justifying introduction of profit oriented operating divisions and new independent farms.
- If more than one farm is cooperating with the project or if there are farms who have already completed the LSFR restructuring process an additional meeting to discuss these experiences can be useful to promote adoption of a business form.
- A final meeting is held with the FRC to recommend new business forms and to prepare model constituent documents.
- The FGA approves the new business forms within seven weeks after FRC formation.

Currently, CAEs are being restructured into AJSCs, Ltds, private leasing companies and private family farms. It is important to note that land held in common ownership by holders of land share certificates cannot be mortgaged by these new business forms nor assigned as an asset of the company holding the common land title. This legal safeguard acts to preserve the future right to land parcels by holders of land share certificates. However, individuals and groups forming new successor entities are encouraged to lease land or land certificates from pensioners and others who do not want to farm the land themselves.

2.3.e. Conducting the Farm Financial Analysis

The computer based financial farm analysis component of the LSFR Program is a major departure from farm resource decision making criteria used in the past. Current farm input use, prices and investment decisions are evaluated within a western accounting format to determine profit and loss and cash flow implications. Results are discussed with farm leaders within four weeks after formation of the FRC and used as input for farm restructuring.

The farm financial analysis component includes four activities:

- village and farm profile questionnaire;
- farm management workshop;
- data collection and analysis; and
- results workshop.

Discussion guides, data collection forms, and analysis formats for this component are provided in Manual Section Five and associated appendices which are in a separate document.

Village and Farm Profile Questionnaire: Each farm completes a questionnaire with eight sections addressing village demographics, farm production and sales, input use, organizational structure, processing activities, restructuring status and financial information. The information is used to provide the change agent team with basic facts about the farm production and economic condition and village population and workforce.

Management Workshop: The initial stage of work after administering the village and farm profile questionnaire and formation of the FRC is to conduct a management workshop with farm managers, deputies and technical specialists (chief economist, chief accountant, chief animal breeder). This workshop is conducted over a two day period and addresses several topics including:

- introduction to decision-making under open market conditions;
- tour of the farm enterprise to observe present practices;
- discussion of the various farm enterprises with management to determine their importance and profitability.

Data Collection and Analysis: Data collection is started during the first farm visit after conducting the Management Workshop and additional forms are left at the farm to be completed and returned to the analysts. These activities include:

- data collection:
 - o recent historical and standard information to complete major enterprise budget worksheets for crops and livestock;
 - o investment requirements for the next ten year planning horizon;

- o production, cost and sales information for minor enterprise information worksheet;
- o information to complete the farm business plan worksheet;
- data analysis.

Data collection and analysis is conducted by trained economists at a cooperating Agricultural University or by staff of the government or private sector Farm Restructuring or Privatization Center. The program used for the analysis is written in Microsoft EXCEL 5 for Windows.

The analysis is based on a standard summary output with detailed backup for major and minor enterprise groups. Additional printouts for operator designated input, price and investment options (sensitivity analysis) can be generated.

Results Workshop: A results workshop is held with farm leadership and FRC members within 4 or 5 weeks after FRC formation. Formal reports are presented during two different workshop sessions of a half a day each. In addition to the oral report each farm receives a written report addressing:

- market considerations for each commodity produced by the farm;
- the present financial performance, based on current resource use and enterprise mix (base case analysis);
- potential financial performance under alternative scenarios regarding commodity prices, resource use and enterprise mix (sensitivity analysis); and
- suggested strategies for reorganizing the farm's business.

When farms are being restructured into several new business entities the ALSP oblast economics staff should, whenever possible, provide similar analyses and discussion concerning the potential for viable commercial operation of these entities.

SECTION 3

LAND AND PROPERTY SHARING COMPLETING THE TASKS

Agricultural Land Sharing and Farm Restructuring in Ukraine

3. LAND AND PROPERTY SHARING - COMPLETING THE TASKS

3.1. Land Share Tasks

Under the provisions to the Land Code of Ukraine dated March 13, 1992, ownership of agricultural land is transferred from the State to the Collective Agricultural Enterprise (CAE). Each CAE member receiving a Land Share Certificate (LSC) has the right to surrender it and to receive an equal parcel of land from holdings included in the state deed to collective land ownership. In addition to surrendering the LSC for land, the holder has the right to sell, donate, bequeath, mortgage, or exchange the certificate.

Before issuing LSCs, the Farm General Assembly (FGA) identifies a “**land share fund**” which is a land area on the farm set aside specifically for those individuals wanting to leave and work their land independently. So, individuals wanting to receive land will know the general location of their land plots ahead of time, which, in turn, may influence their final decision to leave.

The following discussion identifies and describes activities leading to issuing of LSCs and to the surrender of LSCs for discrete land parcels.

3.1.a. Verifying the Land Share Entitlement List

In general, most persons included on the collectively owned land (COL) as defined by state deed to collective land ownership held by the CAE will be entitled to receive a LSC. Such persons include⁵:

- a permanent employee of the CAE;
- a resident pensioner previously employed on the CAE;
- a permanent employee of the CAE on approved leave of absence (for example: to serve in the Ukrainian Army or to attend an approved course of study), but who maintains the right to work on the farm.

Because CAE membership is defined by labor participation, not ownership of a capital share, individuals whose CAE membership is lost between the time the State Land Deed

⁵ Legal counsel should be sought to address problem cases.

is issued and the farm verifies the land share eligibility list may lose the right to receive a land share certificate. In such cases, the CAE has the right to exclude them or their heirs (if loss of membership was the result of death), but individuals losing membership rights, or their heirs, have the right to challenge this decision in court.

Ukrainian law provides that persons whose rights have been violated may file suit within three years from the date the violation occurs⁶. Consequently, the FRC should take all necessary measures to resolve as many membership claims as possible before issuing LSCs, as claims made after LSC distribution are much more difficult to resolve.

Ukrainian law does not clearly address the rights of social sphere workers concerning their ability to share COL. Under the Presidential Decree of August 1995, such persons are excluded. However, the Land Code of 1992 implies that such workers are eligible to receive COL land. In practice, the FGA has authority to include social sphere workers as eligible to receive land shares.

To minimize the possibility of future legal claims by eligible persons whose names have been left off the list, a public information campaign should be undertaken to ensure that all persons who may hold the right of farm membership can identify themselves. The Farm Restructuring Commission (FRC) manages the verification process with advice and support of legal counsel.

The following steps are recommended:

- indicate at the FGA called to initiate the LSFR process that all names on the Collective State Land Deed will be verified prior to issuing LSCs (see also the discussion under verifying property entitlement lists);
- set a closing date for filing claims by individuals seeking to be included on the land share list;
- set a closing date for filing objections to any names on the list;
- approve the location of the land share fund;
- prepare a list of names of all persons included on the Collective State Land Deed;
- identify the name and address of the individual(s) with whom a claim for inclusion on the entitlement list should be made;
- post the list of names, the person(s) with whom claims should be filed, and the deadline date on the CAE central bulletin board and in other prominent places,

⁶ A court may extend this period if the aggrieved person had a good reason not to know of the violation.

such as social clubs, post offices, etc. in each of the villages in which farm employees live;

- FRC prepares a list, for consideration by the FGA, of names to be added to the entitlement list and names to be removed from the entitlement list;
- hold a second FGA meeting to approve the list of persons eligible to receive land share certificates.

The deadline set by the FRC is an arbitrary date but should give individuals a reasonable amount of time to respond. Three or four weeks should be sufficient as most state deeds to collective land ownership were issued in 1995 so there is little reason to believe that there are many individuals whose names have been omitted.

Normally, the CAE Head of Personnel is responsible for reviewing claims by persons wanting to be included on the list and petitions by persons wanting to remove names from the list. Requests for addition and deletion of names from the list should be made in writing. The FRC then prepares a list including the names of all persons who have filed claims to be added to the entitlement list and all persons whose names have been suggested for deletion. This list also contains recommendation for action based on legal advice and other informed opinion,

The list of prospective additions and deletions from the original entitlement list is presented to the FGA for its action. After being verified, the entitlement list is submitted to the FGA for approval. After FGA approval, the entitlement list is submitted to the Raion Land Resources Committee for registration.

3.1.b. Calculating Land Share Size

This section discusses the technical steps undertaken to determine the size and estimated value of land available to each eligible individual. Calculation formulas are provided in *Annex A*.

Boundary Survey: Collectively owned land (COL) to be shared by eligible current and former employees excludes land previously set aside under various land funds (i.e., land designated for protection of forests and other non-agricultural purposes, for distribution as small private plots to individuals, and as use right plots to persons wanting to start private farms). The COL also excludes land on which farm buildings stand.

The primary purpose of the boundary survey is to verify the actual boundaries of the COL and to determine the amount of land under buildings which is within the confines of the farm, but is not included within the COL. Experience shows that the variation between the estimated COL identified on the Collective State Land Deed and that actually determined by the survey is less than 0.5 percent. The survey should be completed before calculating cadastre hectare values. The cost is to be covered by the

oblast land resources committee.

Land Quality Survey: Soil quality is defined by its humus content and land gradient. Soil samples are taken at regular intervals throughout the COL, and land gradients are determined for each field. From this analysis, a fertility index value from 1 to 100 is assigned to each field, with 100 being the most fertile. The resulting soil quality maps of each field within the COL provides the basis for determining the total cadastre hectare figure for each field. (*Annex A* describes the process for calculating cadastre hectares.) Summing over the values for each field results in the total farm cadastre hectares. This figure is maintained by Raion officials and by Land Resource Management staff, but does not appear on the land certificate. The cost of this work is to be covered by the Oblast Land Resources Committee.

Calculating Size of the Land Share: By definition, the average cadastre hectare per person is equal to the simple average number of hectares per person. But land parcels issued to individuals are determined based on soil quality, location, and other profitability factors considered during monetary valuation. Thus, an individual receiving land in an area where monetary value is less than average receives a larger amount of land than an individual receiving land where monetary value is higher than average. Individuals receiving land of average fertility receive land parcels equal to the figure appearing on the land share certificate.

Calculating Land Values: Ukrainian law requires that land share monetary values be calculated and recorded on the LSC. This is not a market value but is derived from calculations related to the return a farmer can expect to receive from an average parcel of land within the COL. Monetary value is determined for each agro-productive soil group based on the 1988 economic rating scale within the land evaluation regions for different types of agricultural (farm) land:

- crop land⁷;
- perennial plantings;
- hay land;
- pasture land.

Following a methodology approved by the Ukraine Cabinet of Ministers (Resolution #213 of March 23, 1995), land values have been calculated by the State Land Resources Committee that correspond to lands of varying soil fertility, gradient, and land use. (The procedure is presented in *Annex A*).

3.1.c. Issuing Land Share Certificates

⁷ The term “crop land,” as used here, refers to that land which is permanently classified for use in crop production. Unlike in the American context, this does not include lands which may be used for crops but are currently used for pasture land. In the Ukrainian context, land use classifications are viewed as permanent.

After the land share entitlement list is approved by the FGA and average cadastre hectares and land values are determined, certificates are printed by Raion Administration staff and distributed to all individuals on the entitlement list.

To promote interest in taking an active part in the land share process, it is recommended that the estimated land share figure be calculated and included as part of the information appearing on entitlement lists and used in information programs. This figure is the simple average of the hectares listed on the state deed to collective land ownership divided by the number of persons whose name appears on the Collective Deed.

It is recalled that, for the COL as a whole, the simple average land share per person is equal to the cadastre hectare per person. Moreover, as discussed earlier, the new boundary survey is needed primarily to satisfy legal requirements as the estimated COL will usually not change significantly from that estimated on the original State Land Deed. Moreover, the verified entitlement list is not expected to be much different from the initial list. Consequently, the actual land share hectare figure appearing on the LSC can usually be estimated within one eighth to one quarter of a hectare before the technical work to determine cadastre hectare values is completed. As a result, farm members can easily gain an idea of the size of their land share at the original FGA. Having this information often makes individuals more interested and enthusiastic about participating in the process.

3.1.d. Legal Rights and Uses of Land Share Certificate Holders

Table 2 summarizes the rights and options available to land share holders. In brief, the holder of a Land Share Certificate has the following options under Ukrainian Law as of July 1997:

- Keep the certificate and receive payments (dividends, etc.) which may be paid out of the profits the enterprise holding the collective land deed;
- Surrender the certificate to the Raion Administration and receive a deed in private ownership to a specified land parcel located in a specially demarcated area on the lands held in collective ownership by the enterprise;
- Sell, exchange, donate, bequeath, or mortgage the certificate.

Ukrainian law permits buying and selling of land share certificates and mortgaging them to a credit agency. However, full procedures for mortgaging certificates have not yet been worked out. The monetary value appearing on the certificate is not the basis for closing a LSC sale or mortgage-based loan. Buyer and seller, or the loan seeker and credit agency, can agree on a price either higher or lower than that stated on the LSC.

However, Cabinet of Ministers Decree #864 OF October 31,1995 indicates that the agreed upon market price cannot, under most conditions, be less than 50 percent of the value printed on the LSC. It is important to note that, under present law (Cabinet of Ministers Methodics #213, 23/3/95) the value represented by the LSC cannot be included in the farm statutory capital.

3.2. Issuing State Deeds to Private Land Ownership

Facilitating the transfer of agricultural lands from the collective ownership of CAEs to the private ownership of CAE members is a very important stage in restructuring CAEs. The main goal of such a change in ownership lies in the creation of legislative preconditions for the emergence of the true owners of the land, who proceeding according to their rights to private ownership of land and other means of production, could themselves manage their land and produce agricultural products or could govern their land and other means of production by leasing their land to other persons that are involved in agricultural production.

The transference of agricultural lands into private ownership is also directed at the achievement of the following objectives:

- the determination of the market value of land. The market value of land should make landowners realize the necessity of:
 - ◇ efficiently utilizing land for the acquisition of profit;
 - ◇ protecting and reasonably utilizing land in order to preserve and to increase its value;
 - ◇ improving the quality of land in order to increase its profitability;
 - ◇ mortgaging land in order to secure additional capital for the development of agricultural production.
- the creation of private landowners who can operate profitably in agriculture by managing land efficiently;
- the formation of a land market as an important regulator of land relations within the framework of a market-based economy. A functioning land market should be subject to minimal regulation by the state;
- the development of land leasing in order to establish an efficient mechanism to redistribute land and to form new market-based legal entities.

Reforming land relations in Ukraine consists of the following three stages:

- the transference of agricultural lands that were in the permanent use of CAEs to the collective ownership of CAEs;
- the sharing of agricultural lands of CAEs that are in the collective ownership of CAEs;

- the transference of shared CAE lands into the private ownership of land share certificate owners which can be implemented in the following ways:
 - ◇ by giving, on the request of CAE members, land shares in kind based on state deeds to private ownership of land;
 - ◇ by unifying all CAE members possessing land shares (symbolized by land share certificates) into a collective of co-owners by concluding an agreement on common ownership, disposal and use of their common land parcel;
 - ◇ by withdrawal from a CAE by two or more CAE members who possess land shares (symbolized by land share certificates) by allotting their land shares in kind as a contiguous land parcel and concluding an agreement between them on common ownership, disposal and use of their common land parcel.

3.2.a. The Process of Transferring Land Parcels into the Private Ownership of Land Share Certificate Holders

In accordance with the November 10, 1994 Presidential Decree "On Urgent Measures To Accelerate Land Reform in the Area of Agricultural Production", every CAE member has the right to withdraw from the CAE and receive (free of charge) a land share in kind with ownership attested by a state deed to private ownership of land. The right to obtain a land share in kind is realized by a CAE member upon the member's obtaining a land share certificate issued by a Raion State Administration.

The allocation of land shares in kind with ownership attested by a state deed to private ownership of land can be implemented both individually to each CAE member on the basis of a member's individual application to withdraw from the CAE, or simultaneously to all CAE members if they withdraw from the CAE simultaneously.

The process of obtaining a land share in kind is regulated by the "Methodological Recommendations on the Order of Allocating a Land Share in Kind out of Land in Collective Ownership to CAE Members and Organizations" which was approved by the State Committee on Land Resources of Ukraine, by the Ministry of Agriculture and Food of Ukraine and by the Ukrainian Academy of Agrarian Sciences on June 4, 1996 (hereinafter referred to as the Methodological Recommendations). This process is also regulated by the "Instructions on the Process of Drafting, Issuing, Registering and Keeping State Deeds on Ownership Rights of Land and Rights to Permanent Use of Land, and of Agreements on Rights to Temporary Use of Land (Including Land Use pursuant to Land Leasing)" which was approved by the State Committee on Land Resources of Ukraine on April 15, 1993.

3.2.b. The Process of Obtaining Land Shares in Kind by Individual Withdrawal of a Land Share Held under Collective Ownership

Pursuant to the Methodological Recommendations, the allocation of land shares in kind should be carried out in the following order when a CAE member submits an application on receiving a land share in kind:

1. The state land surveying entity or any other entity that has the right to implement land surveying operations, draws up a Scheme on Sharing Lands that are in Collective Ownership into Land Shares (hereinafter referred to as the Scheme):

- the scale of the Scheme should be 1:10,000 or 1:25,000;
- the projected land shares in the Scheme's drawings should be numbered in increasing order;
- the Scheme's drawings should have the following information: the projected land shares numbered in increasing order; the location of the land shares; and the dimensions of every side of the land shares and of separate access roads.

1.1. Stages for the Development of the Scheme:

With the purpose of preparing the Scheme, the land surveying entity:

- collects, systematizes and examines the following documents:
 - ◇ plans of land ownership and land use of the CAE for which the Scheme is being worked out; the scale should be 1:10,000 or 1:25,000;
 - ◇ materials of projects for the organization of the use of the land;
 - ◇ technical documentation on the issuance of state deeds to collective ownership on land;
 - ◇ materials on the CAE and its surrounding territory;
 - ◇ soil examination and adjustment of these examinations, tests on radioactivity and other types of technological contamination;
 - ◇ scales of fertility indexes of soils of arable lands, perennial plants and natural meadow lands;
 - ◇ data on the quantity of the population that has the right to land shares in the context of the population of the settlement, data on the location and the capacity of the production units of the CAE.
- collects, systematizes and examines public opinion concerning the order of priorities for implementing land sharing.

1.2. The land surveying entity prepares the Scheme which emphasizes the following:

- land masses that should be divided into land shares only after the seasonal termination of the agricultural cycle;
- lands that can be privatized without any limitations on their further utilization;
- land parcels that are withdrawn in a mass unit without individual fragmentation in kind (irrigated lands, orchards, vineyards, hop-fields, berry-fields, etc.);
- small areas of agricultural lands which will become unsuitable for mechanized soil tillage in cases of individual fragmentation into small land parcels that are not subject to sharing;
- areas that are necessary for the creation of a system of forest shelter-belts and field-protective forest plantings, for the building of anti-erosive hydrotechnical constructions, for the creation of natural territories within agrarian landscapes; networks of field roads; and areas of degraded and polluted lands that are subject to conservation;
- a system of protective forest plantings;
- a system of natural territories within agrarian landscapes;
- a main network of field roads.

1.3. Land parcels that should be shared in kind first are designated from lands that can be privatized without any limits to their further utilization.

1.4. The organization of the territory of the land shares on a scale of 1:2,000 should be prepared for the land which is shared first. This is done to:

- specify the size of the land parcel;
- perform calculations of land parcels in simple hectares;
- carry out the geodesic determination of boundaries of land parcels;
- determine the coordinate points of separate land parcels to the geodesic grid;
- plot the counters of soil types and their fertility indexes.

1.5. The adjustment of crop rotation is implemented by a CAE to take into account transfers in land parcel ownership.

2. The Scheme is approved by the General Meeting of a CAE.

3. The Scheme is approved by the Raion State Administration.

4. The allotment of every land share in kind is implemented. The stages are as follows:

- a land share certificate owner who wishes to obtain his land share in kind submits a corresponding application to a CAE;

- the General Meeting of a CAE determines on the Scheme the location of the land share that is being transferred to the CAE member. The decision of the General Meeting of a CAE is the authorization for performing works on transferring the land share in kind;
- the boundaries of every land parcel in kind are established and fixed. For this purpose, not less than two boundary signs should be placed on every land parcel. The boundary signs should be tied-in to the state geodesic grid and other coordinate signs and objects. The procedure of establishing and fixing the boundaries of a land parcel in kind should be carried out with the participation of the CAE member to whose ownership this land parcel is being transferred, with the participation of the CAE's representative and with the participation of the interested owners of the neighboring land parcels;
- the Act which transfers the land parcel out of the collectively owned lands to the CAE member's ownership is drafted and signed;
- the technical documentation on transferring the land share in kind to the CAE member is prepared. The technical documentation should include:
 - ◇ the copy of the CAE member's application on withdrawing from the CAE;
 - ◇ excerpts of the decision of the General Meeting of the CAE;
 - ◇ excerpts of the authorization of the Raion State Administration on approving the Scheme of dividing the collectively owned lands into land shares;
 - ◇ the Act on transferring the land parcel in kind;
 - ◇ the Plan of the land parcel that is being transferred to the CAE member, with a determination of the area of different kinds of lands;
 - ◇ other documents (if necessary).

The above-mentioned technical documentation should be the basis for the Raion State Administration to make a decision on issuing the CAE member with a state deed to private ownership of land.

5. A state deed to private ownership of land is registered by the corresponding Rada and is given to the CAE member/owner of the land parcel.

3.2.c. The Process of Obtaining Land Shares in Kind by Simultaneous Withdrawal of All Land Shares Held under Collective Ownership

If all or the majority of land share certificate owners simultaneously decide to have their land shares allotted in kind and to obtain state deeds to private ownership of land, but to continue to use their lands in one common mass, then it is recommended to use the simplified variant of sharing of a CAE's lands. As a rule, this simplified variant is being used in practice during the restructuring of CAEs.

The simplified variant of the simultaneous division of a CAE's lands into land parcels consists of the following stages:

1. The General Meeting of a CAE makes a decision on sharing the CAE's lands and receives applications from CAE members on allotting their land shares in kind.
2. A land surveying entity composes a Plan on Dividing the CAE's Lands into Land Parcels (hereinafter referred to as the Plan):
 - the Plan should be worked out by the state surveying entity or any other entity that has the right to carry out corresponding land surveying operations with the participation of the leaders and specialists of the CAE and should be approved by the General Meeting of the CAE;
 - the scale of the Plan should be 1:2,000;
 - the Plan's drawings should contain the following information: the projected land shares, numbered in their increasing order; the areas of the land shares; and the dimensions of every side of the land parcels and of separate access roads.

The stages for drawing up the Plan:

- the following documents are examined:
 - ◇ plans of land ownership and land use of the CAE for which the Scheme is being worked out; the scale should be 1:10,000 or 1:25,000;
 - ◇ materials of projects for the organization of the use of the land;
 - ◇ technical documentation on the issuance of state deeds to collective ownership on land;
 - ◇ materials on the CAE and its surrounding territory;
 - ◇ soil examination and adjustment of these examinations, tests on radioactivity and other types of technological contamination;
 - ◇ scales of fertility indexes of soils of arable lands, perennial plants and natural meadowlands;
 - ◇ data on the quantity of the population that has the right to land shares in the context of the population of the settlement, data on the location and the capacity of the production units of the CAE.
- calculations and the geodesic determination of the land parcels' boundaries are carried out;
- coordinating points of separate land parcels to the geodesic grid are determined, counters of soil types and their fertility indexes are plotted.

3. The General Meeting of the CAE determines on the Plan the location of the land parcel of every CAE member that has the right to a land share.
4. As is necessary, the land surveying entity determines the boundaries of every land parcel on the ground.
5. The local Rada drafts and issues state deeds to private ownership of land.

The allotting of the every land parcel in kind presupposes:

- submission by CAE members of applications to the land surveying entity with requests to establish boundaries of land parcels in kind if such boundaries have not been established before;
- determination and establishing of boundaries of land parcels in kind. For this purpose, not less than two boundary signs should be placed on every land parcel. The boundary signs should be tied-in to the state geodesic grid and other coordinating signs and objects. The procedure of establishing and fixing the boundaries of land parcels in kind should be carried out with the participation of the CAE member to whose ownership this land parcel is being transferred and with the participation of the interested owners of the neighboring land parcels.

3.2.d. Specificities of Allotting Land Shares out of Reclaimed Lands, Lands Planted with Orchards, Vineyards, Hop-Fields, Berry-Fields that Are Collectively Owned

In Ukraine there are many CAEs that have so called lands of special value in their collective ownership. These lands consist of: reclaimed lands, lands planted with orchards, vineyards, hop-fields, berry-fields, etc. Reclaimed lands are lands on which engineering and technical works took place with the following purposes; regulation of the water-air conditions, preservation and restoration of the fertility of soils, improvement of the soils' ecological conditions, and prevention of soil damage caused by natural processes.

The lands of specific value should be subject to sharing equally with the other agricultural lands of a CAE. However, the Methodical Recommendations advise that reclaimed lands, lands planted to orchards, vineyards, hop-fields, berry-fields, etc. should be simultaneously shared without physically dividing them in kind. Thus, the main requirement of legislation on allotting of the above-mentioned lands in kind is the ensuring of the utilization of these lands as one land mass. This can be done by:

- transferring land parcels as a contiguous land mass to two or more land share certificate owners into their common ownership with the further conclusion of

an agreement between these land share certificate owners on common ownership, disposal and use of the contiguous land mass;

- transferring of land shares, whose total area (in conventional cadastral hectares) corresponds to the area of the land parcel of a specific value, to the authorized capital of a legal entity. This legal entity will receive the above-mentioned land shares in kind as a contiguous land mass and, in this way, the legal entity will become the owner of the united land parcel.

3.2.e. The Relationship between the Fragmentation of Land and the Issuance of State Deeds to Private Land Ownership

Issuing state deeds to private ownership of land to CAE members as part of restructuring CAEs does not contribute to the fragmentation of land into commercially non-viable entities under the following circumstances:

- issuing state deeds to private ownership of land requires that borders between land parcels be established, however, borders between land parcels do not have to be physically demarcated by putting stakes along the borders of the land parcel; thus, land parcels can be leased in mass by every landowner entering into an individual land leasing agreement with a lessee to lease the landowner's land parcel;
- during the physical issuance of land parcels, those landowners not willing to lease their land parcels should be given land parcels in one field that will not be leased but instead will be used for establishing private family farms.

3.2.f. Allocating Land Parcels in Kind

Physically allocating land parcels in-kind is the process of associating individual land parcels with each eligible individual. During the land preparation process defined in the previous section all parcels to which a state to private ownership are identified on a map and given a unique number. Since some parcels are considered to be more desirable than others because of location, soil quality, topography, nearness to dwellings, etc. an equitable distribution process must be developed. The two primary allocation options are:

- allocation by list; or
- allocation by lottery

When allocating by list the names of potential parcel holders are systematically arrayed in a list according to some objective criteria such as last names. Then the name of each land share certificate holder is associated with a parcel number starting from parcel number one. The list approach facilitates family members receiving contiguous land

parcels but does not ensure that parcels are located nearby dwellings or in areas for easy access by persons wanting to farm individually.

Allocating land parcels using a lottery procedure provides a conceptually equal chance to draw a “favorable” or “unfavorable” land parcel but does not in the first instance accommodate for desires of family members to receive contiguous land plots. When implementing a lottery procedure numbers representing each land parcel are placed in a sealed envelope and each eligible land certificate holder draws an envelope from a box. The number appearing on the card in the envelope identifies the new owners land parcel.

Neither the list nor the lottery approach accommodates special desires or needs of individuals and it is recommended that a two week negotiating period be incorporated into the process to enable people to trade parcels based on personal needs and desires. For example, pensioners and other individuals who are not likely to want to farm their land are often satisfied to obtain land in the middle of a field whereas other persons who may some day want to take possession of land in order to farm it themselves may want to have parcels located at field edges.

Since negotiation between individuals is always a part of the process of issuing state deeds to private ownership it is essential that the Property Commission be headed by an individual who is highly respected by individuals receiving land parcels. The Commission must maintain careful and complete records of all transactions so that the rights of each participating individual is maintained.

3.2.g. Financing of Works on Issuing State Deeds

The process of allotting land shares in kind out of CAE lands can be financed from different sources.

The composition of the Scheme of the sharing of lands that are in collective ownership into land shares can be financed by:

- the state budget;
- CAEs;
- land share certificate owners;
- third parties (investors, entities that render technical assistance, etc.).

The development of a Plan on the division of a CAE's land into land parcels, the development of the project for the territory of the land parcels where the land shares should be allotted first, and the allotting of the land shares in kind with the issuance of state deeds to private ownership of land is not likely to be financed from the state budget. These operations can be financed by:

- land share certificate owners;

- CAEs;
- third parties (investors, entities that render technical assistance, etc.).

3.3 Property Share Tasks

The Law of Ukraine on Collective Agricultural Enterprises provides the basis for sharing CAE property (non-land assets) with employees. Unlike land sharing, where most procedures are based on strict interpretation of Presidential Decrees, laws, and regulations, most legislation and regulations on property sharing provide guidelines. These laws and regulations delegate major responsibility for the property share process to the FGA. The discussion in this section identifies and describes activities leading to the issuing of property share certificates to members of CAEs or stock certificates to stockholders in joint stock companies (JSCs).

3.3.a. Verifying the Property Share Entitlement List

Most people included on the Land Share Entitlement List will also appear on the Property Share Entitlement List. These include⁸:

- a permanent employee of the CAE;
- a resident pensioner previously employed on the CAE;
- a permanent employee on approved leave of absence (for example: to serve in the Ukrainian Army or to attend an approved course of study), but who retains the right to work on the farm;
- heirs of eligible individuals who die before property share certificates or stock certificates are issued;
- individuals who became employees after issuing the Collective State Land Deed, if approved by the FGA.

Social sphere workers are not specifically excluded by law from participating in property shares, but are generally not included. However, the FGA has the option to include employees joining the workforce after the Collective Land Deed was issued.

During the pilot project phase, some farms attempted to delete eligible workers from the property share entitlement list because they left the farm either voluntarily (moved to another village or town or found another job) or were laid off for cause (chronic drunkenness, poor work performance, etc.). According to Ukrainian law, these workers

⁸ Legal counsel should be sought to address problem cases.

retain the right to a property share. As in the case of land sharing, individuals believing that their rights have been violated have three years to file a suit in the appropriate court.

In verifying the property share list the following steps are recommended:

- vote at the FGA called to initiate the LSFR process that all names on the existing Collective State Land Deed will be considered eligible to receive property shares;
- discuss and vote, if necessary, to determine the right of employees hired after issuing the Collective State Land Deed to participate in property sharing;
- discuss and vote, if necessary, to determine the right of social sphere workers to participate in property sharing;
- set a closing date for filing claims by people seeking to be included on the property share entitlement list;
- identify the name and address of the individual(s) with whom a claim for inclusion on the entitlement list should be made;
- prepare a list of names of all persons included on the property share entitlement list, based on legal requirements and the actions of the FGA;
- post the list of names, the person(s) to whom claims should be filed and the deadline date on the company's central bulletin board and in other prominent places, such as social clubs, post offices, etc. in each of the villages in which farm employees live;
- FRC prepares a list, for consideration by the FGA, of names to be added to the entitlement list and names to be removed from the entitlement list; and
- hold a second FGA meeting to approve the list of persons eligible to receive property share certificates or stock certificates.

As the procedures to verify property share entitlement lists are identical to those used for verifying the land share entitlement list, the reader is referred to the discussion in *Section 3.1.a.*

3.3.b. Calculating Property Share Values

Property is divided among eligible current and former employees based on length of service on the farm and level of earnings while employed. To determine individual property shares, it is necessary to calculate individual historical salary remuneration figures and relate them to total historical salary remuneration. In addition, net value for

farm production assets is calculated and used as the base for determining individual property asset shares. This section describes the procedures involved. *Annex B* develops the formulas in greater detail.

Determining Salary Histories: The LSFR approach requires calculation of salary histories of all workers over the period of time for which salary records were kept. This may cause complications when calculating salary histories for older workers because:

- Before 1966, farm workers were paid in-kind based on labor days worked. These in kind payments must be converted into cash equivalents.
- From 1966 - 1990, workers received cash payments but under varying degrees of inflation. Indexation must be introduced.
- From 1991- 1995, workers received cash payments under situations of hyperinflation and under varying degrees of very high inflation. Indexation must be introduced.

Annex B addresses technical aspects of calculating salary histories for each of the three periods. A computer program has been prepared which calculates total employee historical remuneration and total individual historical remuneration.

Determining Net Property Value for Sharing: Generally, machinery and building inventories have not been maintained to date. Full data on each piece of equipment, building, or other asset is kept in a card file. A ledger book of summary data is also kept. The ledger book usually contains the inventory number, the purchase price and date, the inflation indexed value, the depreciation rate for the particular asset, the total amount of depreciation taken to date, and the inflation adjusted book value, but have not been maintained to date. The ledger book also includes social sphere assets. These are transferred from the farm account to that of the public sector after revaluation. Taking the property inventory involves four steps (which are discussed in greater detail in *Annex B*):

- verifying that all fixed and other long term property assets on the ledger book correspond to property recorded on the file cards;
- verifying that the ledger book and file card property list corresponds to actual assets;
- separating social sphere assets from other farm assets;
- revaluing farm assets; and
- calculating the property share fund.

Step 1: Two people are needed to verify card files with ledger books. Each individual entry in the ledger book is checked against the card file. Use of a laptop computer at the

farm to prepare a new asset register is recommended. This allows easy updating and printing out of modified lists. The following data is recorded on the new asset register:

- item number;
- inventory number;
- a two or three digit code to identify physical location and farm operational unit:
 - o location of asset on the farm (single digit code number representing a production brigade or village)
 - o type of asset or technical function (one or two digit code representing a production or technical unit, such as crop production, water supply, social sphere, etc.);
- year of purchase of equipment or commissioning of buildings;
- purchase price;
- purchase price adjusted for inflation;
- allowable depreciation rate per year; and
- total depreciation taken to date

Introducing a three digit location and division identification code is highly recommended. It provides a locator for assets and introduces flexibility needed to reassign assets to different divisions, villages, or brigades as future restructuring takes place.

Step 2: After completion of the combined list, it is checked against actual equipment on the farm. Property assets are added or deleted as needed and a printed copy is obtained.

Step 3: Social sphere assets are separated from farm assets on the asset register. Sorting by the locator code will easily identify and separate out social sphere assets from valid farm assets.

Step 4: A series of Cabinet of Ministers Decrees endorses reappraisal of property to represent depreciated replacement costs rather than depreciated book value. The effect is to generally increase stated asset value by a factor of 9 or 10. Depreciation is considered a cost item on the income statement prepared for tax authorities, but there is no corresponding cash outlay. Net cash flow is therefore increased. From the perspective of capital replacement, taking depreciation on asset values corresponding to current equipment prices enables farms to more easily raise cash needed to purchase new equipment and other capital items. Alternatively, indexing of original purchase or construction costs is also appropriate and less time consuming for valuing buildings.

Step 5: The property share fund (PSF) is obtained by adding the value of depreciated fixed and other long term assets (LTA) to the sum of available cash plus unsold produce and other short term production assets (feed, fuel, etc.) and accounts receivable (STA) and subtracting all outstanding farm debt (OFD) including accounts payable and short and long term loans. So:

$$\text{PSF} = \text{LTA} + \text{STA} - \text{OFD}$$

Determining Individual Property Share Values: Individual property share values are determined by multiplying each individual's historical salary remuneration (adjusted for inflation) by the coefficient obtained by dividing the total historical salary remuneration of all eligible workers by the net property value (total asset value minus total outstanding debt).

Example: Alexei Fedorov (AF) was employed on the CAE farm from 1962 through 1995, having an adjusted individual wage and salary remuneration (ISR) of 114,070 hryvnyas. The total adjusted historical salary remuneration of all eligible workers (TSR) is 201,470,000 hryvnyas and the net value of the Property Share Fund (PSF) is 8,993,100 hryvnyas. Then:

ISR/TSR x PSF = individual property share or:

$$114,070 / 201,470,000 \times 8,993,100 = 5,091.78 \text{ hryvnyas.}$$

3.3.c. Issuing Property Certificates

At the time of writing this Manual, Ukrainian law permitted only three types of agricultural legal entities which may hold land in collective ownership:

- The Collective Agricultural Enterprise (CAE);
- The Agricultural Joint Stock Company (AJSC), of the closed or open type; and
- The Agricultural Cooperative.

At present, the cooperative enabling legislation is retained from the Soviet period and is unacceptable for organizing a western type business entity leaving CAEs and AJSCs as the only practical forms of agricultural legal entity.

For CAE's, a Property Share Certificate is issued and registered with the farm. For the AJSC, stock certificates are issued with a stated par value. The value represented by the property share is incorporated into the CAE or AJSC statutory fund.

Before certificates can be issued, all individuals included on the property share entitlement list must signify their approval by signing an official certificate authorization list containing the number and value of shares allocated to them. This process takes about two weeks to complete.

Property Share and Stock Certificates are issued by the farm management after approval by the FGA and all eligible individuals have signed the certificate authorization list. Stock certificates issued by closed AJSC are not registered with a public body, but the property inventory values must be registered with the Raion administration. Stock certificates issued by an open AJSC must be registered with Raion administration officials.⁹

3.3.d. Rights of Property Share (Stock) Holders in Closed Agricultural Joint Stock Companies (CAJSCs)

Table 3 summarizes the rights and options available to land share holders. Briefly, the holder of a Stock Certificate (if the enterprise is organized as a CAJSC) or Property Share Certificate (if the enterprise is a CAE) has the following rights or options:

- keep the stock share or property share certificate and receive whatever dividends that may be paid out;
- sell, exchange, donate, bequeath, or mortgage the certificate.

An CAJSC stockholder can also increase his stockholding by contributing money or

⁹ The advice of legal counsel is recommended for issuing stock in either open or closed type AJSC.

property to the corporation if the Charter or Foundation Agreement permits.

3.4. Distribution of Property in Kind

The work discussed to this point in this chapter has been aimed at determining the value of the non-land property of the CAE, and the share of this property that each member is entitled to receive. This section of the chapter discusses an approach used when the property of the farm is distributed - in kind - among owners of the property as represented by their shares. This distribution is generally to entrepreneurs that are trying to establish from the CAE new farms under a new leader or group of leaders.

To implement this process a Property Commission (PC) is established by the Farm Restructuring Commission. The (PC) reports to the Farm Restructuring Commission and is responsible for organizing the process and holding a tender for distribution of the property. The PC verifies documentation to be used, and manages all phases of the property distribution process to ensure that property is distributed in a fair and transparent manner.

A tender approach is used which focuses on movable property that includes the following categories: buildings and structures, equipment and machinery, transportation vehicles, draft and dairy livestock. The “starting price basis” for property is based on the current values established for property when the farm completes the work associated with preparing estimates used to determine the value of each members property share (procedure described in previous sections of this chapter)

Several steps form a part of this process and each is set out in the chart below and is then discussed.

Tender Approach Related to Movable Assets	
<i>Step 1</i>	<i>Submission of Letters of Intent by Leaders/Individuals</i>
<i>Step 2</i>	<i>Submission of Formal Applications for Property</i>
<i>Step 3</i>	<i>Tender Process for Property Sharing</i>
<i>Step 4</i>	<i>Completion of Tender Documents</i>
<i>Step 5</i>	<i>Bills of Sale and Transfer of Property</i>

Step 1 *Submission of Letters of Intent by Leaders/Individuals*

Leaders and people wishing to farm independently and who want to receive property included in the calculation of their property shares may participate in the Tender. Only individuals who hold property shares are eligible to participate. Participants submit a letter that clearly expresses intent to participate in the tender to the Property Commission. In the application they indicate the approximate value of the collected property shares from members. The letters would be submitted before a publicly disclosed deadline, established well in advance of the tender by the Property Commission.

These letters would be verified by the Property Commission for irregularities. Based on the information collected from the letters of intent the commission will determine the number of property shares that have been committed for the purchase of farm property.

The Property Commission will also determine how the lots for tender should be prepared. Lots are generally arranged so as to satisfy share owners who own property shares of insignificant value. The Property Commission should hold educational classes for participants so that participants understand fully the tender process, what their rights are, and to be aware of how lots are composed.

Step 2 Submission of Formal Applications for Property

Once the letters have been reviewed and verified by the Property Commission the participants who have been certified as eligible for purchasing property are invited to submit a formal application stating the aggregate value of their collected property shares, whether they will take all the allocated property, and whether they have a specific name for an entity into which the property should be transferred.

The following points should be observed when accepting applications:

- applications must be correct and accurate.
- participants can receive only whole units of property.
- leaders must provide the Property Commission with formal written permission to use the collected property shares. Also, they must receive written permission from share owners (see Annex 3.3c for an example of agreement with share owners) to use them for the purchase of property or for transfer of property to a specified legal or physical entity of which they - the individuals - will become partial owners. Thus, since some lots to be tendered far exceed the size of most individual property shares it is possible to unite shares by proxy.
- only property that was included in estimating the property share values may be sold at the tender. And the value of property sold should equal the value of the shares.

The Property Commission conducts the receipt and consideration of formal applications in sufficient time to accomplish the tasks necessary prior to the tender date. One week is usually sufficient. The Commission makes available to all participants information that ensures that the submitted property shares and those on the property share registry are consistent and that potential discrepancies between the Commission's and participant's calculations have been eliminated.

Before the tender each participant receives official notification that his or her application has been accepted. In addition to acceptance the place, time, tender rules, and list of participants is provided.

Step 3 Tender Process for Property Sharing

The tender process is held publicly and managed by the Chairman of the Property Commission. Other persons attending the tender meeting should include:

- members of the Property Commission;
- a representative of the Raion leadership;
- tender participants and their representatives;
- others that may have been invited;
- persons with vested interests.

The process of transferring property in kind used by the ALSP involved three stages. The procedure should be publicized well in advance of the actual distribution date.

Stage 1: During this stage property in kind is transferred where there are no questions regarding the property value and the property to be distributed is claimed by only one party. Generally this stage includes such things as grain production in process on land parcels received and costs of apartments inhabited by the members who submit application for withdrawal.

Stage 2: During this stage, items for which more than one tender has been made are distributed. Informal negotiation is conducted among the individuals or groups who have tendered for the same items. The disputants may request a member of the Property Commission to serve as mediator or they may agree to settle the outstanding issues among themselves. Disputes may be resolved by a simple coin toss, or a more formal lottery procedure if all parties agree. If several claimants have tendered for a number of the same items they may agree to drop their claims to one item and take another. Items not disposed of at this stage are carried over to stage three.

Stage 3: During this stage lots not distributed by negotiation during stage two are distributed using an auction procedure. The auction is carried out by a specially appointed Auctioneer as per a procedure approved by the Property Commission. The most common procedure is where each claimant bids openly against each other claimant that had originally tendered for the item. No new tenders are accepted at the auction.

The tender of the stage 3 lots begins when the Chairman of the Property Commission announces the tender rules. The Auctioneer makes an announcement as regards each new lot, and the property included in the lot. Bidders take part in the auction process by paying with shares that remain after completing the first two stages in the process. Under the auction rules winning bidders may exceed the value of their remaining property shares, but before such bids are accepted the bidder must provide satisfactory evidence to the Property Commission that the additional cost can be paid off within a three year time period. If such evidence is not provided the next highest bidder receives the item.

Experience has shown that most property can be distributed during stages 1 and 2. Allowing bids in excess of the value of remaining property shares during the auction process encourages claimants to settle disputes prior to reaching the third stage.

It is possible that some lots will remain unclaimed at the end of the negotiation and auction process. In this case the value of such lots is decreased proportionally to equal the property value remaining after the auction process has been completed and either sold at the new value or sold by requesting a sealed bid.

For example, the table below lists five items to be distributed in-kind. There was only one claim to lot 5 and it sold at the appraised value. Lots 1 and 2 were disputed and sold at auction for prices above their appraised value. Lots 3 and 4 were unclaimed at their appraised value. After completing the

Lot No.	Description	Appraised Value	Percent	Selling Price
lot 1	tractor T150D		3,500	52 3,800
lot 2	tractor T150D	1,000	15	1,100
lot 3	tractor T 40		450	7 not sold
lot 4	tractor T 70		600	9 not sold
lot 5	tractor T150K	1,150	17	1,150
Total			6,700	100 6,050

auction the remaining unused property value was $6,700 - 6,050 = 650$. This value is redistributed proportionately over the unclaimed lots 3 and 4. The new value set by the Property Commission for lot 3 becomes $(.56 \times 650 = 364)$ and the new value for lot 4 becomes $(.44 \times 650 = 286)$.

The two unsold lots are then offered for sale at new prices. If there is still no buyer the lots are sold to the legal entity offering the highest price in a sealed bid. In the event that all property value has been used and some lots still remain, they can also be sold by having interested parties offer a sealed bid.

Step 4 Completion of Tender Documents

The distribution of assets is registered after each item or lot is distributed. Tender minutes are also drawn up during the tender process and are signed by the Chairman of the Property Commission and tender participants.

Step 5 Bills of Sale and Transfer of Property

On completion of the tender the property is physically distributed. The Property Commission, in conjunction with the leadership of the CAE, performs the physical transfer of property to the rightful new owners. As mentioned above this information is indicated on the tender application. A bill of sale showing the value of each transferred asset is completed. This value will normally be the value determined for the asset by the Property Commission in the preparatory stage.

When this five step process has been completed the distribution of property in kind should be complete.

SECTION 4

FARM BUSINESS ANALYSIS

Agricultural Land Sharing and Farm Restructuring in Ukraine

4. FARM BUSINESS ANALYSIS

The farm restructuring process promoted by the LSFR Program in Ukraine is designed to encourage farms to begin operating under market conditions. In market economies, allocation of production resources and development of production plans are guided by market price relationships which determine the choice of production enterprises and the kind and amount of inputs used. As a result, only those enterprises yielding positive returns over input costs will be continued. In order for the market system to work a mechanism must exist that allows prices to adjust to supply and demand conditions. Credit must also be available for farms so that needed production inputs can be purchased and the banking system needs to support the free use of funds as determined by the farm manager.

Not all of these conditions exist in Ukraine at this time. Credit is generally not available or if it is interest rates are too high for profitable use by farmers. The banking system is not designed to facilitate the flow of money between farmers and their suppliers or between farmers and people who buy their products. Instead, it still retains many features of the former banking system which is designed to ensure that debts to the state are paid on a timely basis. Finally, farm products and input price determination are still often subject to monopolistic influences which distort market signals and incentives and cause payments to be delayed.

Largely because of the lack of credit and a non-supportive banking system many farmers will not be able to realize the optimum production and profit suggested by the financial analysis and business plans prepared using the LSFR Program methodology. However, we believe that this should not be used as an excuse for not developing plans which demonstrate the ability of Ukrainian farms to meet world level competition. Instead, farm plans should be used to encourage Ukrainian leadership to complete needed pricing, credit and banking reforms so that the full potential of Ukrainian agriculture is realized.

The LSFR Program encourages farm managers and technical specialists to become directly involved in the process of completing the financial analysis and business plans in association with the LSFR analytical team. In this way, managers and technical specialists are exposed to business planning and decision making under a market economy rather than just meeting production targets set by government officials. Financial planning to make profits requires that managers look at and evaluate several different production and marketing options so that they can choose the plan that is best for their farm. This section of the Manual provides details of the LSFR Farm Financial Analysis model and illustrates the manner in which it is used to make market based business decision and develop farm business plans.

4.1. Complete Village and Farm Profile Questionnaire (*Annex C*)

Each farm will be presented with a questionnaire to be completed by the farm management team. This questionnaire consists of eight sections including:

- Demographics;
- Acreage, Production, and Sales of Product;
- Agricultural Inputs;
- Organizational Structure;
- Processing Activities;
- Village Information;
- Restructuring Status; and
- Financial Information.

This information will provide the analytical team (change agent) with basic facts about the farm. It helps the team to understand the importance of various activities of the farm and how they are related. It helps in determining the major versus minor enterprises on which data will be gathered for the financial analysis. Also, it helps to understand the present internal organization of the farm against which changes may be suggested.

The completion of the questionnaire contained in *Annex C* is self-explanatory.

4.2. Conduct Farm Management Workshop

The initial stage of work following the profile survey and Farm Restructuring Commission (FRC) formation is to conduct a management workshop with the farm managers, deputies, and technical specialists (chief economist, chief accountant, chief agronomist, and chief animal breeder). This workshop is held over a two day period and is conducted in several steps:

- Step No. 1:* introduction to decision making under open market conditions;
- Step No. 2:* tour of the farm enterprises to observe present practices;
- Step No. 3:* discussion with management about the various farm enterprises to determine importance and profitability.

Step No. 1 Introduction to Open Market Decision Making

Purpose: The purpose of this session is to explain to the farm management leadership how decision making differs between an open market and a command type economy.

Activity: The discussion session will cover the manner in which financial information is presented in an open market system. Also, management organization, and firm structure in an open market economy will be elaborated upon. This meeting is conducted by a

change agent that is familiar with how the open market and command economies determine resource allocation and how international financial records are prepared.

Results: The understanding gained during this discussion session will help the management team to appreciate why it is important to present their farm business plan to the world (bankers, investors, input suppliers, product buyers) in an internationally recognized financial format.

Step No. 2 Tour of the Farm Enterprises to Observe Present Practices

Purpose: To provide the change agent with a clear understanding of the farm's current practices, organization, and operational status of both major and minor enterprises.

Activity: The change agent team will make a tour of the farm with key specialists asking questions of the specialists that help to provide insight on how the farm is carrying out its business activities, both technologically and organizationally.

Results: The change agent is expected to gain insight that will be useful when preparing, together with farm management, the ten year financial plan. It will help the change agent to be more contributory to the planning process associated with preparing the ten year financial analysis.

Step No. 3 Discussion With Management of the Various Farm Enterprises to Determine Importance and Profitability

Purpose: The purpose is to establish a clear consistent understanding between the farm leaders and the change agent of each enterprise's present contribution, and their potential contribution to the farm business and its profitability.

Activity: Following the farm tour, the change agent, farm manager, and key specialists meet to review information obtained from the questionnaire, the tour, and farm records. The joint group will review the cost detail kept by the chief accountant, the plans kept by the chief economist, and the production records kept by the chief agronomist and animal breeder in order to determine historical contribution of each commodity produced. Also, usage rates for inputs and prices received for product will be analyzed.

Results: The analytical team will glean from this work a clear understanding of each enterprise's contribution to the farm business. This understanding will facilitate the financial analysis by helping the team focus on whether an enterprise is a major or minor contributor to the farm's profitability, and whether or not it should be emphasized in the future.

4.3. Conduct Data Collection and Analysis

Data collection is started during the first farm visit after conducting the Management Workshop, and additional forms are left at the farm to be completed and returned to the analysts. Data to be collected includes:

- recent historical and normative information necessary to complete major enterprise budget worksheets for crops and livestock;
- investment requirements necessary for the next ten year planning horizon;
- data for minor enterprise information worksheet;
- data for the administrative worksheet.
- farms balance sheets
- detailed statement of receivables and payables

Data analysis will be carried out by qualified economists. The source program used for the analysis is written in *Microsoft EXCEL 5.0 for Windows*. The data collection and analysis work involves several steps, including:

Step No. 1: collection of recent historical and normative information necessary to complete major enterprise budget worksheets for crops and livestock;

Step No. 2: collection of investment requirements necessary for the next ten year planning horizon;

Step No. 3: collection of data for the minor enterprise information worksheet;

Step No. 4: collection of data for compiling worksheet cost and return information:

Substep 4 a: collection of data to complete the cashflow worksheet;

Substep 4 b: collection of price data for completion of sales/revenue worksheet;

Substep 4 c: collection of data for completion of administrative worksheet;

Substep 4 d: collection of data for completion of insurance rates worksheet;

Substep 4 e: collection of data from the balance sheets;

Step No. 5: analyze data.

Step No. 1 Collection of Recent Historical and Standard

Information Necessary to Complete Major Enterprise Budget Worksheets for Crops and Livestock

Purpose: To gather the facts necessary to complete the enterprise budget worksheets needed to prepare the farm business plan.

Activity: The change agent distributes necessary worksheets to the farm leadership team and explains the content of each sheet so that the information may be properly recorded. This activity involves completing a worksheet for each major farm enterprise. Two different worksheets are used - one for crops and one for livestock.

In business plan charts data will be presented in the charts separately as variable and fixed costs. Such a separation will facilitate the proportional adjustment of production costs to the capacities utilized.

Variable costs will change in proportion to the changes in production level. Variable costs refer to costs of labor, seeds, fertilizers, protection chemicals, transportation charges, feed, current repair, water and power supply which are directly related to production. Variable costs could be subdivided into proportional costs which change proportionally to the level of production (they are expenses for seeds, fertilizers, protection chemicals, water supply) and non-proportional costs which change much slower than level of production (current repairs costs, technical servicing). Variable costs will be accounted separately in every major section of the business plan charts.

Fixed costs will remain unchanged irrespective of any change in production level and will include depreciation costs for facilities and equipment, administrative costs and expenses for insurance, marketing and some of the taxes. Fixed costs will be accounted for by the farm as a whole and then distributed among major enterprises proportionally in relationship to the share of variable costs for producing each enterprise against total farm variable costs.

Each worksheet and its specific data requirements are detailed below:

Crop Worksheet: The crop worksheet is attached as *Annex D*. The worksheet is set up in *Microsoft EXCEL 5.0* and consists of a matrix that is 6 columns by 159 rows. The “normative” provides the basis on which each farm chooses as a starting point.

To complete the worksheet, the farm management and technicians, together with the change agent, must obtain the data items listed below for major crops. For convenience, the cell locations are referenced so as to facilitate data entry in the spread sheet. Further detail and a copy of the spread sheet can be found in *Annex D*. Once the data items are collected and organized for each crop, they can be inputted directly to the appropriate computer spread sheet within the farm plan workbook. For those users confident in their computer skills, the data can be directly entered as gathered during discussions with the farm management team. For convenience sake and for facilitating the accounting of the costs the charts were divided into 3 periods: preparation of soil and ploughing,

cultivation, and harvesting.

- Farm Name: Cell C2
- Exchange Rate : Cell E2
- Land Tax (per 1 hectare): Cell F3
- Cost for one Man/Hour(in hryvnya): Cell F5
- Standard Yield (cnt/ha): Cell C5
- Man Hours/Hectare: Row 13, Cells CDE
- Seeds used per 1 ha (in c): line 33, Cell C
- Nitrogen Fertilizer Use/Hectare (cnts): line 44, Cells CDE
- Phosphorus Fertilizer Use/Hectare (cnts): line 49, Cells CDE
- Potash Fertilizer Use/Hectare (cnts): line 54, Cells CDE
- Organic Fertilizer Use/Hectare (tons): line 65, Cells CDE
- Pesticides Use/Hectare: line 82, Cells CDE
- Herbicides Use/Hectare (kgs): line 87, Cells CDE
- Fungicides Use/ton of seeds (kgs): line 92, Cells CDE
- Truck Transportation, Ton x Km/Ha:¹² line 104, Cells CDE
- Horse Transport., Horse Days/Ha: line 109, Cells CDE
- Crop Name: Cell C3
- Planned Hectares:¹⁰ Cell C4
- % of Additional payments (in hryvnya): Cell F4
- Volume of jobs in conditional standard hectares:¹¹ line 10, cell CDE
- Price of seeds for 1 c.: line 34, Cell C.
- Nitrogen Cost/Cnt: line 46, Cells CDE
- Phosphorus Cost/Cnt: line 51, Cells CDE
- Potash Cost/Cnt: line 56, Cells CDE
- Organic Fertilizer Cost/ton: line 67, Cells CDE
- Pesticides Cost/Kg: line 84, Cell CDE
- Herbicides Cost/Kg: line 89, Cells CDE
- Fungicides Cost/Kg: line 94, Cells CDE
- Truck Cost/Ton x Km: line 106, Cells CDE
- Cost/Horse Day: line 111, Cells CDE
- Electric Cost/kWh: line 116, Cells CDE
- Current Repair Cost/Ha: line 126, Cells CDE
- Fuel & Lubricants, Cost/Cnt: line

¹⁰ Planned Hectares: Refers to the number of hectares the farm wants to produce of a particular crop during the plan period.

¹¹ Volume of jobs in conditional standard hectares - is a conditional index which reflects the number of hectares DT-75 tractor (or any other similar tractor) can plough per one hour under standard conditions. All the technological operations will be recalculated in conditional standard hectares as per coefficients depending on the complexity of work and tractor brand.

This index will be calculated depending on the distance inputs, raw materials will be transported times the number of transported tons.

¹² This is calculated by determining the distance the inputs and/or product outputs are going to have to be moved (round trip), and multiplying this number by the number of tons to be moved per hectare.

- Electric Consumption, kWh/Ha: line 134, Cells CDE 114, Cells CDE
- Other Variable Costs (hryvnya): line 143, Cells CDE
- Fuel & Lubricants, Use/Ha, Cnt.: line 132, Cells CDE

There are assumed constant relationships in several formulas that were in force at time of model development. The constants under question include: social insurance (Row 23), Chernobyl fund (Row 24), employment fund (Row 25).

Livestock Worksheet: The livestock worksheet is attached as *Annex E*. The worksheet is set up in *Microsoft EXCEL 5.0* and consists of a matrix that is 5 columns by 75 rows. The “normative” provides the basis on which each farm chooses as a starting point.

To complete the worksheet the farm management and technicians together with the change agent must obtain the data items listed below for major livestock enterprises. For convenience, the cell locations are referenced so as to facilitate data entry in the spread sheet. Further detail and a copy of the spread sheet can be found in *Annex E*. Once the data items are collected and organized for each livestock enterprise, they can be inputted directly to the appropriate computer spread sheet within the farm plan workbook. For those users confident in their computer skills, the data can be directly entered as gathered during discussions with the farm management team.

Because each livestock enterprise worksheet differs in Rows 1 to 11, each enterprise is listed and discussed separately for these eleven rows. After the data requirements for these rows is discussed, the remaining data requirements for completing the spread sheet are similar and are, thus, discussed as a group.

Milk Heading:

- | | |
|--|--|
| • Exchange Rate: Cell E2 | • Livestock Name: Cell C3 |
| • Cost for one Man/Hour(in hryvnya): Cell C9 | • Planned No. of Cows: ¹³ Cell C6 |
| • % of Additional payments: Cell C10 | • Standard Yield (cnt/cow): Cell C7 |

Growth Heading:

- | | |
|---|--|
| • Exchange Rate: Cell E2 | • Livestock Name: Cell C3 |
| • Sales Weight per Animal Sold (cnt/head live): Cell C5 | • Planned No. of Head Grown: ¹⁴ Cell C4 |
| • % of Additional payments: | • Annual % of Heads Sold: Cell |

¹³ Planned No. of Cows: Refers to the number of cows the farm plans to have during the plan period.

¹⁴ Planned No. of Head Grown: Refers to the number of total animals (on average) in the growth herd during the plan period.

Cell C11

- Cost for one Man/Hour(in hryvnya): Cell C10

C6

Swine Heading:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Exchange Rate: Cell E2 • Actual productivity of 1 sow, heads: Cell E3 • Live weight of piglings sold(cnt): Cell E4 • Live weight of hogs for meat sold(cnt): Cell E5 • Live weight of breeding pigs sold(cnt): Cell E6 • % of Additional payments: Cell E7 • Cost for one Man/Hour(in hryvnya): Cell E8 • % of Annual replacement of sows: Cell C12 | <ul style="list-style-type: none"> • Livestock Name: Cell C3 • Planned No. of Sows:¹⁵ Cell C4 • Piglings Sold (%): Cell C5 • Hogs for Meat Sold (%): Cell C7 • Breeding Pigs Sold (%):Cell C9 • Price for 1 centner of piglings live weight for sale, hryvnya: Cell C11 • Price for 1 centner of hogs for meat live weight for sale, hryvnya: Cell E10 • Price for 1 centner of breeding pigs live weight for sale, hryvnya: Cell E11 • Number of Litters per 1 Sow per year: Cell C12 |
|--|--|

Remaining Cells of Livestock Sheets:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Total Labor Costs: (man hrs)¹⁶ Line 18, Cell C • Feed Cost/Cnt of Fodder Unit (hryvnya): Line 31, Cell C • Truck Transportation, Ton/km: Line 40, Cell C • Tractor Transportation Cost/1 conditional hectare (hryvnya): Line 45, Cell C | <ul style="list-style-type: none"> • Feed Consumption Per Unit (ctn): Line 30, Cell C • Animal Protection (hryvnya): Line 36, Cell C • Truck Transportation Cost/Ton/Km: Line 41, Cell C • Tractor Transportation, in conditional Hectares: Line 44, Cell C |
|---|---|

¹⁵ Planned No. of Sows: Refers to the number of sows the farm plans to have during the plan period.

¹⁶ This entry is an estimate by management and the “change-agent” team of total labor costs. Other related labor costs are calculated on this total cost basis using appropriate constants.

- Horse Transportation, horse days: Line 48, Cell C
- Electric Power Consumption, kWh: Line 52, Cell C
- Water Consumption, (000)CuM: Line 56, Cell C
- Other Variable Costs (hryvnya): Line 68, Cell C
- Horse Transportation, Cost/horse day: Line 49, Cell C
- Electric Power Cost per kWh (hryvnya): Line 53, Cell C
- Water Cost, per CuM (hryvnya): Line 57, Cell C
- Current Repair Cost (hryvnya):¹⁷ Line 63, Cell C

There are assumed constant relationships in several formulas that were in force at time of model development. These constants may require changing in the future. The constants under question include: social insurance (Row 21), Chernobyl fund (Row 22), employment fund (Row 23).

Results: The results of this data entry process described above provide the basic information required to complete each enterprise budget. Outputs from the completed enterprise budgets become inputs to the “farm business plan” portion of the computer workbook. Finally, the enterprise budgets provide the change agent and farm management with a tool that can be used to evaluate changes in the usage and/or costs of various inputs, and yields of farm product.

Step No. 2 Collection of Investment Requirements Necessary for the Next Ten Year Planning Horizon

Purpose: To gather the farm management’s anticipated investment needs for the farm over the next ten year time frame. This estimate should reflect the requirements of each major crop or livestock business planned for the next ten years.

Activity: The change agent, farm manager, and key specialists meet to discuss the investment requirements of the farm. The change agent distributes necessary investment and depreciation worksheets to the farm leadership team and explains the content of each sheet before holding an interactive discussion with the team. The joint group will review these investment requirements on a commodity by commodity basis.

The investment worksheet is attached as *Annex F*. The worksheet is set up in *Microsoft EXCEL 5.0* and consists of two separate schedules. The first table is the enterprise investment schedule. The second table is the enterprise depreciation schedule. The “change-agent” and farm management team, particularly the farm manager, input the investment requirements information into the enterprise investment schedule worksheet. The enterprise depreciation schedule calculates depreciation automatically and requires no input from the change agent or farm management team.

¹⁷ Current Repair: This cost item includes fuel and lubrication as well as repairs.

The enterprise investment schedule template is a flexible matrix. It has a fixed number of columns (14). The number of rows established as a starting point in the template is 168. Current value of facilities and equipment should be input into the first lines of investments schedule which are used by the farm for major enterprises. The investment schedule has been set up into six sections: grains; dairy/beef; swine; sugar beets; administrative; and other. In each section, 40, 10, and 7 year depreciated items are accommodated. However, under the administrative section there is an additional 75 year category. These depreciation categories are understood to be consistent with Ukrainian legal practice. The schedule is user friendly in that only three inputs are required: the name; number; and value of the each item to be purchased. The name and number (total for ten years) of each item required is inserted in Column B, and the unit value is inserted in Column C, replacing one (1) which is presently in Column C. If there is no investment item in Column C, the one (1) should remain and no further editing of the row is required. Through the discussion with management, the schedule for purchase of each item is determined. The number of items required in each year is then entered into the formula (replacing the zero) associated with each year of the ten year investment plan. In the case of seven year items, they will be fully depreciated in seven years; therefore, they should be replaced in the seventh year after purchase.

This number of rows provided in the template investment schedule is expected to be adequate for most farms' investment requirements. However, if it is necessary to add more investment items than rows provided, more rows can be added. If more rows are added, they should be rows that include the depreciation formulas for the category being added. Thus, it is necessary to insert entire rows not cells. If rows are being inserted, it is wise to check the depreciation schedule portion of the schedule to be sure formulas have not been changed and to be sure the total and subtotal lines in the investment schedule are adding correctly.

Results: A completed investment schedule which results in depreciation and salvage values, which are automatically transferred to the business plan worksheet.

Step No. 3 Collection of Data for the Minor Enterprise Information Worksheet

Purpose: To incorporate in the farm business plan the performance of several minor enterprises that most farms carry out. Many of these minor enterprises serve internal purposes of the farm community, but if they are undertaken and the farm markets these commodities it is important to reflect this in the respective cash flows.

Activity: The change agent, chief economist, and chief accountant meet to discuss the performance of minor enterprise activities. If necessary, the farm manager can be invited to attend. The change agent distributes a minor enterprise worksheet form that requests the chief economist and chief accountant to provide the revenues, variable costs, and fixed costs for each enterprise. Generally, these specialists have this data.

The minor enterprise worksheet is attached as *Annex G*. The worksheet is set up in Microsoft *EXCEL 5* and consists of one schedule. The change agent, chief economist, and chief accountant input the required information into the minor enterprise worksheet. The minor enterprise worksheet template is a flexible matrix. It has a fixed number of columns (14). The number of rows established as a starting point is sufficient to accommodate 15 enterprises. The schedule is divided into four sections: revenues; variable costs; fixed costs; and net returns. The template schedule has 74 rows including data entry rows and associated headings and summaries.

To complete the schedule entries should be made as set out below:

Standard Year Revenue: Col D, Rows 4 -18 Enterprise Names: Col. B, Rows 4-18
Standard Year Fixed Costs: Col D, Rows 38 -52 Standard Year Variable Cost: Col D,
Rows 21-35

It's worthwhile mentioning that the fixed costs of the minor enterprises includes depreciation of the facilities and equipment which are used in minor enterprises. If major enterprise machinery is used for minor enterprises, depreciation should be calculated as a percentage relationship to the machinery operation while current value of such machinery will be respectively decreased in the investments schedule by the same percent.

Farm profit from minor enterprises will be calculated automatically, however, some of the minor enterprise products could be taxed on profits. In case of such enterprises the formula for net profit calculation will be multiplied by 0.7 for including the respective tax (if the tax rate is 30%).

Once the above entries have been made, the schedule will calculate the remainder of the table. In the formulas associated with *Columns E, F, and G*, the constants should not be adjusted unless the model is used to reflect a different production level in the first three years.

If a minor enterprise is considered to be major a new enterprise a template can be set for that enterprise. If it is a crop enterprise the description for completing a crop budget is followed. If it is a livestock enterprise the description for completing a livestock budget is followed.

The number of rows provided in the template minor enterprise schedule is expected to be adequate for most farms. However, if it is necessary to add more enterprises, more rows can be added. If more rows are added, they should be rows that include the formulas associated with the enterprise in each of the four sections of the worksheet. Thus, it is necessary to insert entire rows not cells. If rows are being inserted, it is wise to check each row to be sure the formulas have copied.

Results: A completed minor enterprise schedule which results in total revenue and cost values necessary for transfer to the "farm business plan".

Step No. 4 Collection of Data to Complete the “Farm Business Plan” Worksheet

In this section the activities are divided into 5 main components - cash flow chart, marketing and revenues chart, administrative costs chart, chart for calculating insurance costs and profitability calculation chart for every enterprise. Each is discussed below. The detailed templates for data entry are shown in *Annex H*.

Substep No. 4a Collection of Data Complete the Cashflow Worksheet

Purpose: To collect data for the cashflow analysis which is not provided from other spread sheets.

Activity: The change agent, Farm Manager, Chief Economist, and Chief Accountant meet to discuss debt-related items (existing debt, interest rate, discount rate, and the principal pay-down rate) which the change agent suggests be used to complete the cashflow analysis.

To complete the cashflow schedule, entries should be made as set out below:

Real Discount Rate: Cell C69

Interest Rate: Cell C70

Principal Pay-down Rate: Cell C71

Existing Debt: Cell E72

Interest rate - should be the lowest realistic interest rate which might be available from a bank for farm credit - currently 15% from international financial institutions like EBRD.

Principal Pay-Down Rate - is the percent rate which the farm will pay annually for long-term debts. If for example, the principal pay-down rate is 25% then the farm will settle its long-term debts during 4 years.

Real discount rate - is the percent rate by which ten year net cash flow is discounted to calculate the Net Present Value of the cash flow both with and without Salvage Values. Typically the real discount rate will equal the interest rate since this is a reasonable estimate of the opportunity cost of capital.

Current debt - is the long-term and short-term payables which are shown (presented) in the balance sheets of the farm.

Once the above entries have been made, the schedule will calculate the remainder of the cashflow table provided all other input entries are properly made.

Substep 4b Collection of Price Data for Completion of

Sales/Revenue Worksheet

Purpose: To select price information for each commodity that the farm management team is presently realizing, and to discuss possible future prices.

Activity: The change agent, together with the Farm Manager, Chief Economist, and Chief Accountant, reviews records to determine the prices received by the farm for the major commodities produced. Agreement is reached on prices received and the change agent uses this information to complete the sales/revenue worksheet. Prices which are input into the chart should include VAT. For convenience sake they will be shown in Hryvnyas and will be automatically calculated in US \$. The prices agreed upon are entered in Column C, for crops Rows 90 to 93, and for livestock Rows 97 to 99.

Substep 4c Collection of Data for Completion of Administrative Worksheet

Purpose: To develop, together with the management team, an estimate of the overhead costs associated with operating the farm.

Activity: The change agent, together with the farm manager, chief economist, and chief accountant, reviews records to determine the number of staff in each of several administrative job categories, and the respective annual salary payment for each job category. In addition, several administrative expenses (advisory services, office supplies, telephone, postage, travel, social services) are detailed and their costs entered. If additional items need to be added, rows can be inserted, but be sure to enter full rows and not sets of cells or formula integrity will be lost.

To complete the cashflow schedule, entries should be made as set out below:

- | | |
|--|---|
| • Job Categories (number of persons employed): Col.C, Row 122 to 128 | • Job Categories (salaries): Col.D, Row 122 to 128 |
| • Other Administrative Services: Col.C, Row 129 to 134 | Other Administrative Services (costs): Col.D, Rows 129 to 134 |

Results: The inclusion of the data indicated in the last three worksheets will allow the change agent to complete the “farm business plan” and, thus, the base case financial analysis for the farm.

Data collection for filling out insurance deduction worksheet.

Purpose: To make insurance deduction calculations associated with farm operational activities together with the farm management team.

Activity: The analyst together with the farm manager, chief economist, and chief accountant will discuss the crops harvest and livestock insurance. After having reached agreement as regards insurance rates this information is input into the computer.

The following data will be entered into the computer:

- Insurance percent, Col. D 138-144
- Balance value of one head - Cell C 142, C 144

Balance sheet analysis

A special program has been elaborated for analyzing the balance sheet data, which is based on data from farm balance sheet statements (form #1 “Balance of the Enterprise” and form #2 “Report on Financial Results”). Also the computer program will calculate 3 groups of economic ratios: liquidity, profitability and stability.

Purpose: The objective of this analysis, by applying coefficients, is to show the current economic and financial state of the farm, its efficient resource utilization and calculation of the relationship between own equity and borrowed funds. This analysis serves as a basis for comparing results of farm activities after restructuring has been completed with the current situation. Also this analysis can possibly be used for describing the existing situation on the farm when preparing a write-up of the business plan.

Activity: The analytical team will receive from farm management the latest balance sheet report and enter information from it into the computer Forms #1 and #2 whose templates have been elaborated for the program. This program consists of several working charts. The first working chart is the template for inputting the assets from the balance sheet report. Balance sheet data will be entered at the beginning of the year (column C) and at the end of the reported period (column D). These data will be entered as per sections:

Asset worksheet:

- Name of the farm - Cell A4
- Date, month, year of report preparation - Cell A5
- Fixed assets (Section 1) - Columns C,D, lines 13-25
- Inventory (Section 2), Columns C,D, lines 28-40.
- Cash and receivables (Section 3) - Column C,D, lines 44-64.

Liabilities worksheet:

- Name of the farm - Cell A4
- Date, month and year of the report

- Equity (Section 1) - Columns C,D, lines 12-30
- Current liabilities (Section 3), Columns C,D, lines 38-54
- Long-term liabilities (Section 2), Columns C, D, lines 33-35.

preparation - Cell A5

“Financial results” worksheet:

- Revenues from marketing - Cell C8
- Production expenses - Cell D13
- Results of other sales - Cell C 15, D 15
- Value added tax - Cell D 10
- Excise duty - Cell D 11
- Income and expenses from other market transactions - Cell C 18, D 18

Summary worksheet : total land acreage of the farm- cells D 6, F 6.

The program will automatically calculate the relationship between the current and fixed assets, own equity and borrowed funds as well as relationship between the balance sheet items within each section. Also liquidity ratios will be calculated to determine whether the farm has sufficient resources for settling its debts and financing its current activities.

The turn-over ratios and age of inventory ratios will show the efficiency of certain kinds of resources and will calculate the average time span between purchase, production and receiving money from customers which buy the products or services from the farm.

The profitability ratios will show return on invested capital as well as on fixed and current assets.

The stability ratios will calculate the level of financial risk of investments in the farm as well as the relationship between equity and borrowed funds.

Result: The analysis of these data at different time periods will help the specialists to analyze the financial position of the farm, its capability to pay debts as well as continue its current business activity. These coefficients will be used in making some of the managerial decisions. On the basis of the ratio analysis the analytical team will make conclusions as regards the improvement or deterioration of the financial situation of the farm and the degree of attractiveness and risk for investors and financial institutions.

Step No. 5 Analyze Data

Purpose: The change agent analyzes the results of the farm business planning work to determine the implications for the farm and actions that can be recommended to improve the performance of the farm.

Activity: The change agent takes the data gathered and the financial analysis prepared and

analyzes the results of the base case analysis and the sensitivity analyses to determine the implications for the farm. After completing the determination of implications, the change agent team will prepare a set of recommendations that can be discussed with the farm management. The discussion will aim to help the management team understand how the recommendations can be implemented or what needs to be adjusted.

For analyzing the data the analytical team can use the information contained in the 4 Charts for calculating the profitability of various enterprises of the farm. These charts provide an insight into the general expenses as per type of enterprise, production costs for 1 centner of product, net profit, share in the overall profit of the farm and level of profitability in every enterprise.

For analyzing these data, investments and cash flow 6 charts were developed: “Chart of investments inflow”, “Chart of net cash flow and investments”, “Chart of profitability rate for all enterprises”, “Chart of net profit shares of enterprises”, “Chart of discounted accumulated cash flow for the fixed assets”. The charts are contained in *Annex G*.

Results: This task will result in a set of recommendations to management that they can consider pursuing. It gives the change agent the chance to share views regarding improvements to farm performance.

4.4. Conduct Results Workshop

The final stage of work following the profile survey and farm business plan data collection and analysis is to conduct a workshop with the farm managers, deputies, and technical specialists (chief economist, chief accountant, chief agronomist, chief animal breeder) to present the results of the analytical work. This activity is conducted in two different workshop sessions of a half day each. Along with the oral reporting, each farm is left a report that includes several items:

- market considerations for each commodity produced by the farm;
- the farm’s present financial performance, based on its present use of resources and enterprise mix (base case analysis);
- the farm’s potential financial performance under alternative scenarios regarding commodity prices, resource use, and enterprise mix (sensitivity case analyses); and
- suggested strategies for reorganization of the farm’s business.

Step No. 1 Market Considerations

Purpose: The purpose of the market comments prepared for this workshop is to provide the Farm Management with information that will help to confirm or discourage the continued production of present major enterprises.

Activity: The analytical team will gather market information from several sources and prepare a brief market overview relating to supply, demand, competition, and prices. The facts gathered will be assembled into a brief comments report and included as an annex to the Farm Financial Report.

Results: In addition to the comments report, the overview of the market will be discussed at the workshop session.

Step No. 2 Present Financial Performance

Purpose: To present the farm management team with the analytical team's view of their present financial position and to identify areas of business concern that management can correct.

Activity: The activity associated with this task involves a thorough analysis of the plan that the farm management and the change agent developed. It will cover such items as a review of profitability associated with each major enterprise, productivity of each enterprise, costs as compared to other key international competitors, and a discussion of how their resources are being used.

Results: The interactive discussion between the farm management and the change agent will serve to direct focus on the alternative scenarios that merit review.

Step No. 3 Alternative Resource and Enterprise Mix

Purpose: To present farm management with the results of the alternative sensitivity analyses, and indicate how the changes impact farm performance.

Activity: The change agent will prepare several sensitivity analyses (experience to date suggests that six or seven scenarios are sufficient to cover the important alternatives), and the results will be discussed during the workshop session. The discussion will cover the implications of commodity price changes, changes in input use, changes in enterprise mix, and changes in productivity. In addition to the oral discussion, a summary report incorporating the findings will be prepared.

Results: The interactive discussion between the farm management and the change agent, after this session, should help to bring the farm management team to the same position relative to actions they may take to improve their performance and profitability.

Step No. 4 Strategies for Reorganization

Purpose: To present farm management with the change agent's ideas regarding operational strategies for the farm during the next several years.

Activity: The change agent, based on the analysis of the base case, the sensitivity analyses, and other facts learned about the farm, will prepare a set of conclusions and recommendations. This work will result in a set of information from which the change agent will prepare ideas concerning future business strategies for the farm. In addition to the oral discussion, a summary report incorporating these strategic recommendations will be prepared.

Results: A statement of strategic alternatives the farm can pursue.

SECTION 5

RESTRUCTURING FARMS INTO NEW LEGAL ENTITIES

Agricultural Land Sharing and Farm Restructuring in Ukraine

5. RESTRUCTURING FARMS INTO NEW LEGAL ENTITIES

5.1. Conceptual Basis for Farm Restructuring

This Section pertains to restructuring existing CAEs into new legal entities. The LSFR does not advocate any one specific legal form but supports those forms which have a legal standing in western market economies. Specifically, unlike organizational forms inherited from the former Soviet Union, western forms clearly separate ownership and the use of labor, capital and land, allowing farmers to use the appropriate amount of each resource needed to maximize profits and cash flow.

Membership in a western legal economic entity is usually determined through ownership of capital assets rather than through labor participation. The latter was the norm throughout the former Soviet Union and it greatly limits the adaptability of a commercial farm to changing economic conditions brought about by the workings of a market economy. Thus, in the western context, being an owner or user of land is legally separate from working on the land or from owning or using capital assets in the organization which is working the land. This permits a wide choice of labor, capital and land ownership and use combinations which is in sharp contrast to the rigid capital and labor intensive production units typical of the former economic system.

The western-type corporate entities that have been created through LSFR restructuring - agricultural closed and open joint stock companies, limited liability companies, private leasing companies and private family farms or independent farmers - all adhere to the organizational and structural elements (noted above) for attaining success in a market

setting. Agricultural Closed and Open Joint Stock Companies in their charters clearly separate land, property, labor and management. This introduces flexibility into the restructured entity and facilitates future market-based organizational and structural change. Limited Liability Companies are formed on the basis of concentrating and streamlining ownership and usually own and use farm property contributed by its founders and lease land from the owners of land share certificates or state deeds to private ownership of land. Private Leasing Companies and Private Family Farms lease undivided farm property from property share certificate holders and land from owners of land share certificates or state deeds to private ownership of land. Through such mass, group leasing, Private Leasing Companies and Private Family Farms preserve the commercial viability of farm property and land by preventing the fragmentation of their use into small commercially non-viable agricultural entities.

The LSFR believes that the combination of restructuring into these western-type corporate entities along with the rapid movement toward the private ownership of agricultural land will be a major step forward in the process of Ukraine taking its rightful place as one of the world's major agricultural countries.

Table 4 provides a series of diagrams illustrating the different types of farm restructuring.

Transformation: This is the least complex form of restructuring as it simply creates a new legal entity either a joint stock company (JSC) or a form of limited liability company (Ltd.) from the original CAE. A subvariant is to reorganize existing production brigades into profit-oriented subsidiaries or divisions. Under transformation, one new western type of legal entity is formed which clearly separates ownership and use of land, property, labor and management.

Splitaway: Under this restructuring form the original CAE remains as an operating unit but new JSCs, Ltds or independent farms are formed.

Breakup: This restructuring form is the most comprehensive in that the original CAE is liquidated and a large number of new forms may emerge. Splitaways or breakups may occur, and individuals may lease land to new farms either individually or through new land leasing companies. Property companies which enter into joint activity contracts with new JSCs, Ltds or independent farmers can further enhance incomes of property share holders.

Mergers: Mergers of two or more CAEs or incorporation of smaller farms with larger ones are the final restructuring forms. This type of restructuring is quite rare.

5.2. Analysis and Forms of Business Companies and Their Efficacy Relating to Agricultural Land and Property Sharing

5.2.a. Overview

Business companies in Ukraine must be created pursuant to the law of Ukraine of September 19, 1991, entitled “On Business Companies.” The term “business companies” refers to all types of legal entities suitable for operation in a market economy. The structures and the level of partner, owner or member liability differ, however, depending on the particular type of business company. The following is a brief point by point explanation of business companies of the following forms: the Agricultural Closed Joint Stock Company (ACJSC); the Limited Liability Company (Ltd.); the Additional Liability Company; the General Partnership; and the Limited Partnership. These are explained within the context of the Agriculture Land Share Project (ALSP).

5.2.b. The Agricultural Closed Joint Stock Company (ACJSC)

The Agricultural Closed Joint Stock Company (ACJSC) is governed by a founders’ agreement and charter. The model charter prepared by the ALSP provides that the decision-making body of an ACJSC is the General Meeting. The General Meeting consists of the stockholders of an ACJSC. The General Meeting elects a Board of Directors and a Chairman who manage the day-to-day affairs of an ACJSC. The General Meeting also elects a Review Committee which monitors and oversees the activities of the Board of Directors and the Chairman.

ACJSCs are legal entities which, upon formation, issue shares of stock in place of property share certificates to stockholders who are former members of Collective Agricultural Enterprises (CAEs). Stockholders then contribute their shares of stock to the authorized capital of the ACJSC. The aggregate number of shares of stock and the overall value of the stock that each stockholder is entitled to is determined by a stockholder’s term of service and wage history as an employee of the CAE (of which the ACJSC is the successor entity). Each share of stock represents one vote for a stockholder in voting proceedings of the General Meeting.

The ALSP to date has participated in the legal reorganization of numerous CAEs into ACJSCs. Although, ACJSCs and CAEs possess many common features of legal organization, ACJSCs and CAEs contain significant differences that favor the ACJSC form. **First**, in the ACJSC form, ownership of property (assets) by stockholders within the company and labor relations within the company are not linked, but rather are founded on different legal grounds and are governed by different laws. This distinction means that it is possible for a stockholder of an ACJSC to be a non-worker of the ACJSC and, correspondingly, it is possible for a person to be a worker of an ACJSC but be a non-stockholder of the ACJSC. However, in the CAE form, property (asset) ownership and labor are combined as they are based on membership in a CAE. Indeed, membership in a CAE implies the right to employment without the necessity of an individual contractual labor relationship. Membership in a CAE also implies the right to possess a CAE land and property share. However, it should be noted that it is possible for a person to be a non-member worker on a CAE.

Second, in the ACJSC form, the withdrawal of a land parcel by a stockholder does not divest the stockholder, who is the owner of the land parcel, of the stockholder's rights (held in shares of stock) in a particular ACJSC. However, in the CAE form, withdrawal of a land parcel by a member of a CAE terminates membership in the CAE.

Third, in the ACJSC form, a stockholder has the right to sell the stockholder's shares of stock at any time (subject to possible restrictions imposed by the charter of the ACJSC). In the CAE form, a member of a CAE may sell the member's property share only after termination of membership in the CAE.

Fourth, in the ACJSC form, a stockholder may buy shares of stock from another stockholder and thus increase the stockholder's voting power in company decision-making (one share equaling one vote). However, in the CAE form, a member of a CAE has no legal right to buy another member's property share and thus, no legal right to possess two or more property shares in a CAE. Therefore, members are locked into a system whereby each property share holder has only one vote at a CAE General Assembly meeting regardless of the property share holder's personal ambition or volition.

Fifth, an ACJSC may be easily transformed into an Agricultural Open Joint Stock Company (AOJSC) in which shares of stock in the company will be traded over the open market. However, the transformation procedure of a CAE into an AOJSC is more complicated.

Sixth, the model charter for ACJSCs as developed by the ALSP allows for the streamlining of management activities and decisions by directing them away from the General Meeting and toward the Board of Directors and the Chairman of the ACJSC. Specifically, pursuant to this model charter, the General Meeting may delegate to the Board of Directors authority to determine **all** matters of company operation with the exception of the following: passage of amendments to the charter of the company; establishment and liquidation of subsidiaries, affiliates and branches of the company; termination of the company's activity; election of the Board of Directors and the Chairman; selection and activities of the Review Committee; appointment of the Liquidation Committee; and approval of the liquidation balance.

Seventh, the formation of ACJSCs out of CAEs may be more appropriate and advantageous in politically conservative oblasts. This is because ACJSCs preserve elements of the status quo (for example, General Assemblies are relatively similar to General Meetings and the role of the Farm Manager [Chairman of an ACJSC] is preserved). In addition, the legal structure of ACJSCs ensures that change does not occur so rapidly that it threatens the economic safety net of members.

Finally, At this time, holders of land share certificates cannot pledge their land share certificates as foundation capital of an ACJSC. This preserves the right of holders of land share certificates to dispose of their land share certificate as they choose, including the right to receive land parcels. Thus, in the legal restructuring process of CAEs into

ACJSCs, there is no risk to holders of land share certificates that lands encompassed by holders of land share certificates could be lost through a credit foreclosure proceeding.

5.2.c. The Limited Liability Company (Ltd.)

The Limited Liability Company (Ltd.) is a legal entity in which authorized capital is divided into shares, whose amount is governed by constituent documents such as a founders' agreement and charter. An owner of an Ltd. bears responsibility for the business operations and debts of the Ltd. only to the extent of the owner's personal investment in the authorized capital. This is the concept of limited liability from which the Ltd. takes its name.

The supreme managerial body of an Ltd. is called the General Meeting of Owners. In the interval between General Meetings of Owners, an Ltd. is governed by its executive body (the Board of Directors and/or Chairman). The Board of Directors and/or Chairman has the right to make decisions on all matters concerning company activities except those retained in the exclusive authority of the General Meeting of Owners of the Ltd.

Each owner has the right to withdraw from an Ltd. at any time. In doing so, an owner receives as compensation the owner's share in the Ltd.'s. property which is proportionate to the owner's personal investment in the authorized capital. In addition, the withdrawing owner, with the consent of the remaining owners, may alienate the withdrawing owner's share in the Ltd., either to the remaining owners or to third parties, if otherwise not prohibited by the constituent documents.

The formation of an Ltd. offers many advantages for land and property restructuring. **First**, although Ukrainian law requires the owners of an Ltd. to raise a minimum amount of authorized capital in order to form an Ltd., this minimum amount of authorized capital is a rather small amount. It is currently 10,625 UH (approximately 6,000 USD) for the entire Ltd. This amount is absolute and does not depend on the business activity that the Ltd. is engaged in, nor does this amount depend on the aggregate number of owners of the Ltd. In addition, Ukrainian law requires only 30 percent of the minimum amount of authorized capital to be raised on the calendar date of creation of an Ltd. Moreover, this 30 percent need not be in monetary form, but can simply be (pursuant to Article 13 of the Law entitled "On Business Companies") a building, equipment, securities, use rights to land or property, intellectual property, etc.). A newly-formed Ltd., thereafter, has a full year to raise the additional 70 percent of required authorized capital. Furthermore, practical legal enforcement of this minimum capitalization requirement for Ltds. is lacking. Although, this latter point illustrates the ease with which Ltds. can be created in Ukraine, it is debatable whether this lack of legal oversight of minimum capitalization requirements is an advantage favoring the creation of Ltds.

Second, Ltds. have the ability to expand by taking in new owners who agree to provide additional authorized capital. Ltds. also offer owners the option of selling their shares

and receiving appropriate compensation. In this instance, other owners have the right of first purchase of the withdrawing owner's share in the Ltd., and only upon their refusal will a third party be permitted to buy the withdrawing owner's share and become an owner of the Ltd. In addition, unlike ACJSC's, in which real market prices of shares of stock may be minimal and even illusory, the value of authorized capital of an Ltd. is more likely to be stable and real. In Ltds., the authorized capital is divided amongst a smaller number of persons than in an ACJSC and therefore, is more readily exchangeable.

Third, the owners of an Ltd. should gradually come into ownership or leasehold possession of a large amount of the land of the former CAE. This is due to the fact that the Ltd. form gives land share certificate and property share certificate holders the following options: (1) to try to secure work from the owners as workers on the Ltd.; (2) to assign for compensation one's land share certificate (and of course, indirectly, the land parcel that goes with it) or property share certificate to the owners, to other legal entities or to a natural person; or (3) to sell one's land share certificate or property share certificate to the owners, to other legal entities or to a natural person.

The ramifications of option (1) are significant in that only individuals whom the owners of the Ltd. agree to employ become workers of the Ltd. This is likely to result in the Ltd. having a slimmed down, more efficient work force (it should be noted that this is also true for ACJSCs). In addition, the workers of the Ltd. are more likely to receive timely payment for their labor as this will be the direct responsibility of the owners whose cash flow should be considerably better than that of an ACJSC which is often burdened with heavy social overhead costs. Options (1), (2) and (3) listed above should have the combined effect of expediting the development of a system of land tenure more closely paralleling western market systems.

Fourth, the General Assembly of a CAE, through its vote to liquidate itself, can indirectly select which natural persons will be the original owners of the Ltd. being created. This should aid forces within the General Assembly who want to liquidate in favor of the Ltd. form and should deflect criticism that, in liquidating itself for the Ltd. form, the General Assembly is turning the farm over to rich, influential and/or well-placed outsiders.

Fifth, the Ltd. form is very adaptable to situations in which it is suitable, or even preferable, to create multiple Ltds. out of a single CAE. For example, in situations in which a CAE encompasses 2 or more villages, or simply a large amount of land or when various production sub-units (dairy, poultry, food processing, cash crops, etc.) opt to operate individually.

Finally, in more politically progressive oblasts, where reform forces are stronger than entrenched interests, the formation of Ltds. has tremendous potential for bringing about major pro-market changes in land and property ownership and use. Another advantage of Ltds., as evident in practice, is that a high-level of trust between owners of an Ltd. is not necessarily required. Furthermore, the withdrawal of one or even a number of owners, as a rule, does not result in the liquidation of an Ltd.

5.2.d. The Additional Liability Company

The Additional Liability Company is a legal entity in which the authorized capital is also divided into shares, the amount of which is determined by the company's constituent documents. However, unlike the owners of an Ltd., an owner of an Additional Liability Company is liable for the company's debts not only to the extent of the owner's personal investment in the authorized capital, but bears additional financial liability proportional to each owner's personal investment in the authorized capital. This is payable from the owner's personal assets (car, house, savings, etc.). In all other aspects, an Additional Liability Company is similar to an Ltd. possessing the same above-mentioned advantages and disadvantages.

5.2.e. The General Partnership

The General Partnership is a business entity in which all partners are engaged in mutual business activities and bear joint liability for the debts of the General Partnership. A General Partnership does not have a charter although relations between partners are regulated by a founders' agreement which determines the amount of each partner's share in the partnership, the amount, structure and procedure of investments and the form of each partner's participation in the General Partnership's activities. The name "General Partnership" reflects the limits of the partners' liability for the General Partnership's debts. This name denotes that if the property of the General Partnership is not sufficient to pay all debts upon the General Partnership's liquidation, the partners are personally liable to pay the remaining part of the debts out of their personal assets (car, house, savings, etc.) against which, pursuant to Ukrainian law, legal recourse may be taken.

Management of a General Partnership is carried out on the basis of the partners' mutual consent. Management may be conducted either by one, more than one, or all of the partners acting on behalf of the General Partnership under power of attorney.

The advantages of General Partnerships include relative ease of formation and a favorable climate to attract investment capital. The main disadvantage of General Partnerships is that a high-level of trust between partners is necessary because personal liability is unlimited. In addition, the withdrawal of even one partner mandates entering into a new founders' agreement.

5.2.f. The Limited Partnership

The Limited Partnership is a legal entity which consists of one or more general partners whose liability extends to personal assets (car, house, savings, etc.) for the Limited Partnership's debts and one or more limited partners whose liability is

restricted only to the extent of their personal investments in the property of the Limited Partnership. Thus, technically speaking, two people can form a Limited Partnership. The Limited Partnership has features from both the General Partnership and an Ltd. The partners may be classified as general partners, who bear complete liability, and limited partners (investors), who bear limited liability. However, if a limited partner enters into a contract on behalf of, and in the interests of, the limited partnership without authorization from the Limited Partnership, the limited partner bears complete personal liability (car, house, savings, etc.) for the concluded contract.

Relations within a Limited Partnership are regulated entirely by the partners possessing general liability. The limited partners are not authorized to place constraints upon the management activities of general partners. In the event of withdrawal by all of the limited partners, the general partners may reformulate the Limited Partnership into a General Partnership instead of liquidating the Limited Partnership.

5.4. General Analysis

As a whole, business companies (for example, ACJSCs, Ltds., Additional Liability Companies, General Partnerships and Limited Partnerships) of all types enjoy equal rights under Ukrainian law as regarding their business activities. Business companies can be created and operated in all sectors of the economy. However, in creating business companies in the agricultural sector, one must comply with the Land Code of Ukraine which lists legal entities authorized to exercise the right of collective ownership of agricultural land. Legal entities which possess the right of collective ownership of agricultural land are CAEs, Agricultural Cooperatives, Horticultural Societies and Agricultural Joint Stock Companies. Thus, among business companies, Ukrainian law allows only Agricultural Joint Stock Companies to keep (own) land in collective ownership.

At the same time, collective ownership of land is a transitional form of landownership during the process of transferal from state to private sector ownership. According to the Presidential Decree of November 10, 1994, entitled “On Urgent Measures to Accelerate Land Reform in Agricultural Production,” one of the main tasks of transferring land to collective ownership is the creation of legal prerequisites for the future sharing of agricultural lands. Unfortunately, the legal status of shared lands is not clearly defined by Ukrainian law. However, relying on general provisions of the Civil Code of Ukraine, one may assert that after having carried out sharing of lands, the right to collective ownership by CAEs evolves into the right of common ownership by members of CAEs. Thus, one may take the legal position that once a CAE has shared land among its members, the CAE may be reorganized pursuant to Ukrainian law into other business companies in addition to the Agricultural Joint Stock Company form. In such cases, taking into consideration that lands have been shared and that the new Constitution of Ukraine does not authorize land to be held in collective ownership, State Deeds to collective ownership of land issued to CAEs or ACJSCs lose their legal force. Successor entity business companies of CAEs or

ACJSCs may use lands on a contractual lease hold basis entered into between the successor entity and a group of holders of land share certificates.

Based on the practical experience of the ALSP, one may assert that the most suitable business entities for the reorganization of CAEs are the ACJSC form and the Ltd. form. This assertion is based on the fact that the members of an ACJSC and the owners of an Ltd. bear only limited liability for debts relative to a member's shares of stock in an ACJSC or an owner's personal contribution to the authorized capital of an Ltd. The financial protection offered through limited liability helps to facilitate the approval of legal reorganization by members of CAEs and aids in the formulation of Ltds. by owners. ACJSCs and Ltds. are also recognized legal entities in western law whose organizational frameworks simplify the formation of Joint Venture Partnerships with foreign businesses. However, the ALSP views ACJSCs primarily as transitional devices that serve to accelerate the ultimate disposition of land and property into different entities which will be formed out of ACJSCs.

In reorganizing CAEs into ACJSCs and Ltds., two main objectives are usually realized. The first objective involves dividing large and, as a rule, difficult to manage CAEs into two or more smaller entities better suited to market-based economic conditions. In practice, this is usually carried out in relation to the number of villages comprising a CAE, or is dependent upon the reorganization wishes of local leaders (usually leading professionals or chief specialists of a CAE).

The second objective in reorganizing CAEs into ACJSCs or Ltds. is formulation of a framework that legalizes the division of membership of CAEs into economically active and economically passive members. Economically active members of CAEs are usually individuals of working age who possess the knowledge, ability and willingness to oversee commercial agricultural production. Such individuals will most often become the owners of Ltds. or other business forms that can survive in a market setting. Economically passive members of CAEs include hired workers, pensioners or other individuals not capable or desirous of overseeing commercial agricultural production

Inherent in the reorganization of CAEs into new legal entities is the need to legally establish the right of the new entities to use land share certificates owned by the former members of a CAE. The best approach is the legalization of the leasing of land share certificates by such new entities. However, land share certificate holders are usually not able to lease their certificates because the boundaries of an individual land share have not been physically demarcated. This problem may be surmounted if all of the land share certificate holders of a liquidated CAE enter into lease contracts with a new entity. Such lease contracts may be entered into because the object of rent (all of the land encompassed by the land share certificates) will be known and it will be possible to draw fixed, defined land boundaries.

The practical experience of the ALSP also foresees that in the formation of successor entities to former CAEs, there exists a distinct need to provide successor entities with

use-based access to the property necessary to maintain existing production and marketing support facilities (i.e., crop storage facilities, agricultural machinery, repair shops, etc.). Generally, it is neither efficient nor expedient to divide all the property of a liquidated CAE among its successor entities because of existing modes of property organization. Furthermore, if one successor entity comes into ownership of a particular production or marketing support facility, the other successor entities are faced with monopoly situations since there are currently no alternatives other than to try to create expensive duplications.

The above-stated difficulty would be remedied if these requisite production and marketing support facilities were operated by a service provider company which is owned by the successor entities of a CAE. Using this system successfully, a CAE can be reorganized into many smaller units and thereby gain the benefits of private entrepreneurship over crop and livestock production activities while use-based access to essential input supply and product marketing support facilities is preserved. The successor entities could form this service provider company as an ACJSC. The successor entities would make property contributions in the form of production and marketing support facilities to the ACJSC. The successor entities would be the stockholders and thus, would choose the management personnel of the ACJSC. The ACJSC would provide production and marketing support services on a contractual basis to the successor entities and to third parties. In this manner, the ACJSC would be financially self-sufficient and would assume the role played in western countries by agricultural production and marketing cooperatives. Due to a lack of tax advantages and inconsistent enforcement of anti-monopoly laws, the economic rationale for forming western-type marketing cooperatives (distinct from ACJSCs) is not yet present in Ukraine.

Additional opportunities to create new legal entities arise **after** withdrawal of land parcels in conjunction with the proper recording of state deeds for private ownership of such land parcels. Under these circumstances, ACJSCs, Ltds. and Additional Liability Companies or private family farms can be established. Land parcel owners can contribute their land parcels to the authorized capital of an ACJSC, Ltd. or Additional Liability Company or lease the land parcel to such an entity. In addition, land parcel owners have the right to farm independently or to form associations of farmers.

It should be noted that there have been cases where entities other than those mentioned above (usually identified as an association) are formed to replace a CAE. However, the ALSP's initial analysis of the constituent documents of these entities reveals that these entities possess new market economic nomenclature, yet retain most of the organizational framework of a CAE. In addition, many of these entities have been formed in violation of Ukrainian law and would not be recognized as legitimate legal entities by western law.

5.3. The Creation, Organization and Legal Status of Private Family Farms in Ukraine in Comparison with Family Farm Corporations in the United States

5.3.a. Private Family Farms in Ukraine

Pursuant to Ukrainian law, a private family farm is a business activity involved in production, processing or marketing of agricultural products. The formation and operational activities of private family farms are governed by the law entitled “On Private Family Farms”, the law entitled “On Collective Agricultural Enterprises”, the Land Code of Ukraine and by other legislative enactments.

Pursuant to the law “On Private Family Farms”, the founder of a private family farm must be a single natural person, at least 18 years of age, who is contractually competent and a citizen of Ukraine.

The formation of a private family farm begins with the receipt of a land parcel. A land parcel for a private family farm may be received in the following ways: from the raion administration (which allocates land parcels primarily out of lands from the reserve fund) or through withdrawal of a land parcel by a member of a Collective Agricultural Enterprise (“CAE”) to set up a private family farm.

Ukrainian law limits the total amount of land that a private farmer may own for agricultural use. Specifically, a private farmer may own or possess in permanent use a parcel of land which comprises not more than 50 hectares of arable land and 100 hectares of overall (total) land. However, Ukrainian law allows a private farmer to own or possess in permanent use a parcel of land which comprises not more than 100 hectares of arable land in areas deemed to have insufficient labor resources (for example, in certain southern oblasts of Ukraine). In addition, to arrive at an amount of land suitable for profitable farming, a private farmer may lease additional land, the total amount of which is not limited by Ukrainian law.

To receive a land parcel from the raion administration, a founder, wishing to start up and oversee a private family farm, must submit a corresponding application to the raion administration. Such an application is considered by a competence commission formed by the raion administration which decides whether the founder possesses sufficient agricultural experience, skills or qualifications to competently conduct private agricultural activity.

The receipt of a land parcel into private ownership, permanent use or lease hold use marks the first step toward the creation of a private family farm. After having been issued a state deed to the land parcel, a founder must submit to the raion administration an application for the registration of the private family farm. The law requires that the registration be filed not more than 30 days from the date of the receipt of the state deed to the land parcel. At the moment of registration, a private family farm becomes a legal

entity. Legal entity status implies the right to possess a seal with the private family farm's name and address, to open a bank account and to enter into business contracts with natural persons or legal entities. This completes the legal process of creating a private family farm.

The legal concept of a private family farm in Ukraine contemplates that the labor of such a private family farm will be conducted by members of the private family farm. The law provides that membership on a private family farm is limited to the spouse, parents, children who are at least 16 years of age and other relatives of the founder of the private family farm, who are organized together to work on the private family farm. However, a person working pursuant to a labor contract on the private family farm, even if related to the founder of the private family farm, may not be a member of the private family farm.

A private family farm is overseen by its founder. The members of a private family farm are not considered to be founders of the private family farm, despite the fact that their names are listed in the founders' applications on receiving the land parcel and in the registration of the private family farm. The members of a private family farm do not possess the right to elect or dismiss the founder from the founder's leading position on the private family farm. In addition, in the event that the founder is incapable of carrying out the founder's responsibilities, the founder solely is empowered with the right to choose the founder's successor from amongst the members of the private family farm.

A founder of a private family farm acts largely as the manager of the private family farm. The founder represents the interests of the private family farm in dealing with governmental bodies, natural persons or legal entities. The founder also bears personal legal responsibility for the preservation of safe labor conditions, hygiene, sanitation and fire protection measures for the members and hired workers of the private family farm.

A founder of a private family farm possesses the right to individually dispose of the land and property of the private family farm if there are no other members of the private family farm. However, if the private family farm consists of one or more members besides the founder, the founder may not individually dispose of the land and property of the private family farm without the consent of the members. The law "On Private Family Farms" states that the land and property of a private family farm are held in common ownership by the members of the private family farm, if the members of the private family farm do not otherwise agree to a different form of land and property ownership. The law "On Private Family Farms" contemplates that ownership, use and disposal of the land and property of a private family farm will be administered on the basis of mutual agreement among the members rather than upon the individual decisions of the founder.

Pursuant to the law entitled "On Taxation of Income of Enterprises", a private family farm is responsible as a legal entity for payment of taxes on income earned by the private family farm. The founder and members are not personally responsible for the payment of such taxes. However, Ukrainian law requires the founder and members to pay income tax on payments (dividends) received in kind or in monetary form from the private family farm.

In the event of financial insolvency, payment for the debts of a private family farm is limited to land and property owned by the private family farm. Liability for the debts of a private family farm does not extend to land or property personally owned by the founder or members of the private family farm. Therefore, pursuant to Ukrainian law, a private family farm possesses the legal corporate status of limited liability.

If a member wants to terminate the member's association with a private family farm, the member may receive the member's personal share of property in kind or in monetary compensation. The method of payment will likely depend upon the effect that payment of property in kind would have on the viability of the private family farm. In the event of a dispute, a court of law will adjudicate the form of payment.

In the event of the death of the founder or a member, a private family farm maintains its legal entity status. If the founder or member dies testate, then the founder's or member's personal share of the land and property of the private family farm is bequeathed pursuant to the will of the decedent. If the founder or member dies intestate, then the founder's or member's personal share of the land and property of the private family farm is bequeathed pursuant to the Ukrainian inheritance laws. Upon the death of the founder, the founder's heir becomes the new founder. If there is more than one heir and there is a dispute over who will become the new founder, a court of law will adjudicate this dispute. The new founder has to re-register the private family farm and the state deed to the land parcel with the raion administration in the new founder's name.

Ukrainian law does not preclude the possibility of the reorganization of a private family farm into a Limited Liability Company or other business form. In such an event, corresponding constituent documents such as a charter and a founders' agreement should be developed.

5.3.b. Comparison with Family Farm Corporations in the United States

The Ukrainian private family farm may be compared with the American family farm corporation, sanctioned by state law in states such as Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota and Wisconsin. Both entities ("the Ukrainian private family farm and the American family farm corporation") must be registered as legal entities (the Ukrainian private family farm with the raion administration and the American family farm corporation with the secretary of state of the state where the land of the American family farm corporation is physically located). Both entities must be solely engaged in business activities relating to agriculture.

Both entities base their ownership, managerial and labor structures around the extended family. On a Ukrainian private family farm, members must be the spouse, parents, children who are at least 16 years old or other relatives of the founder. In an American family farm corporation, the majority of voting stock must be held by and the majority of

stockholders must be persons related to each other through a common ancestor either by blood, marriage or adoption.

Both entities offer their members/stockholders the protection of limited liability status for debts of the Ukrainian private family farm or the American family farm corporation. Both entities are considered to be distinct legal persons and are required to pay taxes on income. Both entities provide a way for owners to end their association with the entity. On a Ukrainian private family farm, a member may receive in kind or monetary payment for the member's personal property share. In an American family farm corporation, other stockholders have the right of first purchase of the stock of an exiting stockholder. Finally, both entities survive the death of owners or chief personnel. The effect of the death of the founder or a member of a Ukrainian private family farm is mentioned above. The death of a stockholder of an American family farm corporation has no effect on the American family farm corporation as the stock of the stockholder is transferred by inheritance.

A Ukrainian private family farm and an American family farm corporation also differ in several aspects. A Ukrainian private family farm does not issue stock to its members, however, an American family farm corporation issues stock to stockholders based on their personal contribution to authorized capital. A Ukrainian private family farm is limited in the total amount of land that it can own, whereas an American family farm corporation is generally not subject to this limitation. In general, an American family farm corporation operates more formally, with articles of incorporation mandating periodic meetings of stockholders and regulating voting procedures and the issuance of securities (stocks and bonds)¹⁸.

¹⁸ In this analysis of Ukrainian private family farms, it should be noted that sole proprietorships, the basic form of agricultural production in the United States, have no real counterpart under Ukrainian agricultural law. Sole proprietorships are not legal entities, are not limited in their land holdings, do not possess limited liability, do not survive the death of their proprietor and do not shield their proprietor from individual liability for taxes owed by the sole proprietorship. Ninety percent of agricultural entities in the United States are operated as sole proprietorships. The only slightly comparable form under Ukrainian agricultural law are subsidiary farms of less than 2 hectares which are operated essentially as sole proprietorships. However, due to their small size, subsidiary farms are not engaged in commercial agriculture and are not really comparable.

Table 5

COMPARISON OF UKRAINIAN PRIVATE FAMILY FARMS WITH AMERICAN SOLE PROPRIETORSHIPS AND AMERICAN FAMILY FARM CORPORATIONS

Form	Ukrainian Private Family Farm	American Sole Proprietorship	American Family Farm Corporation
Nature of Entity	legal entity separate from founder and members	single individual	legal entity separate from stockholder-owners
Source of Start-Up Capital	personal investment provided by founder and members	personal investment, loans	contributions of stockholders for stock, loans
Liability	limited to personal investment	complete personal liability	limited to personal investment
Membership	members must be required level of consanguinity to founder	no membership status	stockholders must be required level of consanguinity to each other
Voting	the decision making process does not involve voting	the decision making process does not involve voting	proportional to equity ownership
Land	arable land of not more than 50 hectares and overall land of not more than 100 hectares owned in fee simple absolute land amount limitations do not apply if area deemed to have insufficient labor resources	land not subject to amount limitations and owned in fee simple absolute land often serves as collateral for debts owed additional land often in lease hold possession	land not subject to amount limitations and owned in fee simple absolute land often serves as collateral for debts owed additional land often in lease hold possession
Management	management decisions made jointly by the founder and members founder is the manager of the farm	sole proprietor exercises complete management rights	stockholders elect directors who manage business through officers selected by directors
Benefits	profits distributed among the founder and members	sole proprietor receives all profits	profits distributed as dividends in relation to stock ownership
Labor Force	members and possibly hired workers pursuant to labor contracts	sole proprietor and usually his family and possibly hired workers pursuant to labor contracts	stockholders and possibly hired workers pursuant to labor contracts
Income Taxes	private family farm pays taxes as a legal entity, members not personally responsible for payment of income taxes	income taxed personally to sole proprietor	corporation files a tax-return and pays tax on income, stockholders not personally responsible for payment of income taxes
Effect of Death	upon founder's death, founder's heir becomes new founder, private family farm continues	liquidation	no effect on corporation, stock passes by will or inheritance

5.5. Restructuring Farms with Debt Problem

5.5.a. Main Types of CAE Debts

The majority of collective agricultural enterprises (CAEs) have debts. Depending of the status of creditors, these debts can be divided into two main types:

- budgetary debts and debts owed to state funds dedicated to particular purposes;
- debts owed to natural persons, legal entities and governmental entities such as state bakeries.

There are differences between budgetary debts and debts owed to state funds dedicated to particular purposes and debts owed to natural persons, legal entities and governmental entities: the state does not provide a provision for budget debts and debts owed to state funds dedicated to particular purposes to be transferred to a third party by means of concluding an agreement on debt transfer. However, debts owed to natural persons, legal entities and governmental entities can be transferred to a third party with the consent of creditor(s).

Debts can be divided into the following types:

- debts in monetary form;
- debts in natural form (for example, debts that must be paid in agricultural products, etc.);
- debts in the form of services (for example, debts that must be paid by performing labor or rendering other services).

The type of debts owed does not have any concrete influence on the CAE restructuring process. However, the type of creditors to which debts are owed very often has a significant influence on choosing the way in which a CAE is restructured.

5.5.b. Share of Debts when Implementing Different Ways of Restructuring CAEs

The order of settling debt payments depends on the way in which a CAE is being restructured. In accordance with current legislation, restructuring of a CAE can be performed in three main ways:

- reorganization;
- liquidation;
- liquidation through bankruptcy procedures.

Reorganization

The procedure of reorganization allows carrying out restructuring in the shortest period of time compared with other types of restructuring. In accordance with the law "On Collective Agricultural Enterprises", reorganization could be carried out by means of:

- amalgamation;
- association;
- division;
- apportionment;
- transformation.

The above enumeration is exhaustive of the ways in which a CAE can be reorganized.

Amalgamation - is a type of reorganization in which a CAE is united with another legal entity. During this process, all property rights and obligations of each entity being amalgamated, including their debts, are transferred to the legal entity that is being created as a result of the amalgamation. The entities being reorganized by means of amalgamation with one another cease their activities as separate units.

Association - is a type of reorganization in which a CAE is associated with another enterprise. During this process, the entity with which a CAE is being associated obtains all property rights and obligations of the CAE, including debts. The entity with which the CAE is being associated proceeds with its activities. A CAE which is associated with another entity ceases its activities.

Division - is a type of reorganization in which a CAE is divided into two or more legal entities. Property rights and obligations of a CAE, including its debts, are transferred to these new legal entities in accordance with a scheme of division. A CAE which is divided ceases its activities.

Apportionment - is a type of reorganization in which a new legal entity is apportioned out of a CAE. A part of the property rights and debts of a CAE are transferred to a new legal entity. A CAE proceeds in its activities with the remaining part of its property and debts.

Apportionment should be differentiated from the creation of a subsidiary firm. After the creation of a subsidiary firm, a CAE would act as the subsidiary firm's owner. A new entity after its apportionment out of a CAE, is independent of the CAE.

Transformation - is a type of reorganization in which a CAE changes its organizational and legal status and transforms into another legal entity (for example, into a private enterprise, an association, etc.). All property, rights and obligations of the former CAE, including debts, are transferred to this new legal entity.

When reorganizing a CAE, the value of property shares should be specified on the date of their verification. Such specification is necessary to accurately determine the contribution of every member of the reorganized CAE into the authorized capital of a new legal entity(s) being formed as a result of the CAE's reorganization.

Reorganization of a CAE should correspond to the following conditions:

- (1) Reorganization should be carried out only upon a decision of the General Assembly composed of CAE members.
- (2) When two or more legal entities are to be formed as a result of CAE reorganization, proportionality should be observed in transferring the CAE's rights and obligations to these new legal entities. This means that if a certain amount of the CAE's debts are transferred to a new legal entity, an equivalent amount of the CAE's property should also be transferred.
- (3) The property share rights of CAE members should be secured in the process of CAE reorganization. In the event that a new legal entity is formed as a result of CAE reorganization and this new legal entity does not have a property fund, then the property share rights of every reorganized CAE member that becomes a founder of a new legal entity should be transferred into a property right of another kind. Depending on the organizational and legal status of the new legal entity being formed, and depending on the voluntary choice of CAE members, the property share rights can be secured in the following ways:
 - When a CAE is being reorganized into an association with all former CAE members becoming members of the association, then every member should be given a share in the authorized capital of the association, and this share should correspond to the member's property share. The new entity being formed should have transferred to it the property rights and obligations of the CAE, including the CAE's debts;
 - When a CAE is being reorganized into an association and not all of the former members become members of this association, then members who do not become members of the association should be given their property shares in kind. Property shares can be given into the common ownership of several CAE members in case the value of property, designated for several CAE members, exceeds the value of their individual property shares. Such kind of transfer of property into the common ownership of several persons can be carried out only by their mutual agreement. If the reorganization of a CAE into another entity causes infringement of the CAE members property share rights, then it is considered to be a violation and the CAE members have the right to petition to a court to protect their violated property share rights. For example, if the property shares of CAE members are reduced to take into account the debts of the CAE without such a decision being adopted by the

General Assembly of the CAE, then CAE members could petition to a court to protect their property share rights;

- In the case of amalgamation and association, CAE member property share rights should be realized through obtaining the right to be a member of a new entity or through receiving property shares in kind.

There exist other variants for the realization of CAE member property share rights in case two or more legal entities are formed on the basis of a reorganized CAE. In particular, a CAE member can become a member of each legal entity that is being formed on the basis of a reorganized CAE.

Liquidation of a CAE on Its Own Initiative

In some cases, it may appropriate to carry out the reorganization of a CAE through its liquidation and to create one or more new legal entities on the basis of the liquidated CAE's property. Such a way of restructuring is completely legal. The legislative base provides the possibility for a CAE to be liquidated by a decision of the CAE General Assembly. When a CAE is liquidated upon its own initiative, it is very important that such liquidation is carried out by a CAE independently. This gives the possibility to the CAE managerial bodies and members to control and monitor all stages of the liquidation process.

The CAE liquidation procedure should be as follows:

- CAE General Assembly makes a decision:
 - ◇ to liquidate the CAE;
 - ◇ to create a liquidation commission or to authorize a managerial body of the CAE to carry out functions on CAE liquidation;
 - ◇ on the order and terms of liquidation;
 - ◇ on the term within which creditors can submit their applications (not less than two months beginning with the moment of the announcement of the CAE's liquidation).
- The liquidation commission or other managerial body of a CAE that is authorized to carry out functions on CAE liquidation, act as follows:
 - ◇ publishes information on CAE liquidation in official press of the locality where the CAE is situated. The publication should contain information about the order and terms for creditors to file their claims;
 - ◇ defines debtors of the CAE and levies debtor's liabilities;
 - ◇ defines creditors of the CAE and informs them about the CAE's liquidation;
 - ◇ estimates the property of the CAE;
 - ◇ settles payments with creditors;
 - ◇ makes up a liquidation balance.

- The CAE General Assembly approves the liquidation balance.
- Banking accounts of the CAE are closed.
- The CAE is taken off the register of state tax administration.
- The CAE's seal and stamps are canceled.
- The CAE is excluded from the State Register of Ukraine.

The main problem of CAE liquidation lies in the settlement of CAE debts and liabilities. There exist two variants to settle such debts and liabilities:

- The CAE can settle payments with creditors by means of money, property or by any other form depending on the type of debt and the type of agreements entered into with creditors;
- The CAE can transfer its debt liabilities to a third party if the third party and the CAE's creditors agree on such a transfer.

The order for a CAE to satisfy the creditors' claims is clearly fixed by legislation. In accordance with law "On Collective Agricultural Enterprises", the creditors' claims should be satisfied in the following order:

- budgetary debts;
- banking debts;
- compensation for environmental losses, caused by CAE activity;
- satisfaction of claims submitted within the term established for the submission of creditors' claims;
- satisfaction of claims submitted after the expiration of the term established for the submission of creditors' claims.

At the same time, the following claims can not be satisfied:

- claims that are not recognized by the liquidation commission, in case the creditor does not apply to court within a one month period beginning from the moment the creditor has been informed that his claims were completely or partially unrecognized by the commission;
- claims that were submitted after the enterprise had been excluded from the State Register;
- claims that can not be satisfied due to a lack of property.

If two or more agricultural enterprises are being formed on the basis of the liquidated CAE's property, the CAE's debts can be transferred by means of debt transfer. Debt transfer is an agreement between the CAE and a third party with the approval of creditor(s) in which the CAE's debt is transferred to a third party. A written document, certifying the CAEs creditors' approval of debt transfer, is obligatory. Debt transfer can be applied to various types of debt liabilities, such as the payment in money, the assignment of property and the rendering of services. However, the current legislative base does not provide the possibility to transfer CAE budgetary debts and debts owed to state funds dedicated to particular purposes.

Bankruptcy

Bankruptcy - is the insolvency of a CAE, in which due to a shortage of liquid assets, creditors' claims can not be paid and budgetary obligations can not be fulfilled within an established period of time.

The essence of the procedure in which a legal entity is recognized as bankrupt is that the procedure can not be carried out by managerial organs of the legal entity. Rather, the bankruptcy procedure is carried out by an arbitration court.

The bankruptcy procedure should be carried out in stages as written below:

Stage 1. Application to an Arbitration Court.

The bankruptcy proceeding can be instituted upon a written application by:

- (1) a CAE creditor;
- (2) a CAE itself;
- (3) entities of the state tax administration, control auditing commission, Pension Fund, Social Insurance Fund, etc.;
- (4) Procurator in the interest of one of the creditors.

Stage 2. Arbitration Court Approval to Institute the Bankruptcy Proceeding.

Upon getting an application, an arbitration court within a five-day term adopts a decision on the instigation of the bankruptcy proceeding and delivers the information on this decision to the debtor, the creditors and to the debtor's banks.

Stage 3. Preliminary Session of the Arbitration Court Concerning the Bankruptcy Proceeding.

During the preliminary session, that is to be carried out within one month from the instigation of the bankruptcy proceeding, an arbitration court acts as follows:

- studies the documents, submitted by the parties;
- hears explanations of the parties and banks;
- considers the efforts of the parties and banks.

Following the results of the preliminary session, an arbitration court acts as follows:

- obliges the applicant to submit an announcement about the initiation of bankruptcy proceedings to be published in an official publication body of the Supreme Rada of Ukraine (newspaper "Golos Ukraini") or of the Cabinet of Ministers of Ukraine (newspaper "Uryadoviy Kuryer");

- in case of necessity, empowers the debtor's bank or any other entity to manage the debtor's property.

Stage 4. Searches for Creditors and Possible Intervenors.

Within a one-month term upon the moment of publication about instigation of bankruptcy proceedings, creditors and persons that would like to intervene in the bankruptcy proceedings should submit appropriate applications to an arbitration court.

Stage 5. Organizing of the Session and the Committee of Creditors.

After the expiration of the one-month period of time beginning from the moment of publication about the instigation of bankruptcy proceedings, an arbitration court issues an approval that binds all persons and entities, that have submitted their applications with property claims to the arbitration court, to organize the session of creditors during which, in case of necessity, an authorized creditors committee can be formed.

Stage 6/1. Approval of the Decision on Intervention by the Arbitration Court.

A decision on intervention can be approved by an arbitration court upon the expiration of the one-month period under the following conditions:

- availability of applications from those parties that wish to satisfy the creditor's claims and the budgetary liabilities of the debtor (i. e. availability of intervenors);
- availability of the creditors' agreement on transferring the debts to an intervenor and on the specified period of time for this process.

The CAE has the right to choose the conditions of intervention in case it submitted an application itself to be recognized as bankrupt in an arbitration court. Otherwise, such right will belong to the session of creditors or to the committee of creditors. If several entities or persons expressed their will to intervene in the bankruptcy proceeding, then the selection of an intervenor(s) should be carried out on a competitive basis.

Arbitration court approval should determine the following conditions:

- terms of agreement between the debtor and intervenor concerning transferring debts, including the possible restructuring of the CAE on the provision that an intervenor gets a share in the authorized capital of new legal entity being formed;
- terms of paying creditors' claims by an intervenor(s) (time limits, priorities, etc.). Payment of the entire sum of the CAE debt by an intervenor(s) should be an obligatory condition of the agreement.

Approval of intervention by an arbitration court terminates the bankruptcy proceedings.

Stage 6/2. Approving a Decision by an Arbitration Court that Declared a Debtor Bankrupt.

An arbitration court declares a debtor bankrupt if there are not any possibilities about CAE intervention or in case the CAE's creditors do not agree with the terms and conditions of the intervention. At the moment the CAE terminates its economic activities; the time frame in which CAE debts were to be paid is voided; and the accrual of penalties on unpaid debts is ended.

Stage 7. Activities of the Liquidation Commission.

A decision of the arbitration court which declares a CAE bankrupt also determines the CAE's liquidators. Such liquidators are chosen from the session of creditors, banks and from financial bodies. The liquidators form a liquidation commission. The right to manage the CAE's property and all of the CAE's property rights and obligations are transferred to the liquidation commission. In particular, the liquidation commission carries out:

- management of the CAE's property;
- valuation and inventory of the CAE's property. The value of the property is calculated in accordance with the order established by law "On Privatizing Small-Scale State-Owned Enterprises" and according to Methods of Estimation of Property Value during Privatization, approved by Resolution No. 961 of the Cabinet of Ministers of Ukraine of August 15, 1996;
- measures to get debtors' payments;
- sale of the CAE's property and conducts other measures aimed at satisfying claims of the creditors. Sale of the CAE's property and transfer of money to creditors are the ways to satisfy the creditors' claims. The liquidation commission makes a decision on selling the CAE's property upon an agreement with the session of creditors. Information on the sale of the debtor's property is disseminated through the mass media. If two or more requests to purchase the CAE's property are submitted to the liquidation commission, then the liquidation commission holds an auction. The starting auction price and the order to hold an auction are to be in conformity with the Law "On Privatizing Small-Scale State-Owned Enterprises";
- the establishment of a liquidation balance.

Assets from the CAE property sale are directed toward paying off the creditors' debts. The order of priority should be as follows:

- expenses of the arbitration court, the liquidation commission and the CAE property manager; and creditors' claims secured by a mortgage;
- liabilities to employees of the CAE (excluding payments on property shares and the issuance of property shares to CAE members);
- state and local taxes, non-tax payments to the budget, claims of social insurance bodies and social security bodies;
- creditors' claims not secured by a mortgage;

- liabilities to employees of the CAE concerning issuance of property shares and dividend payments on property shares;
- the rest of the claims.

The claims should be satisfied in the above order. The payments of every stage in this list should be preceded by a complete satisfaction of the previous stage of claims. In the event of a shortage of assets to satisfy completely all claims of the creditors listed in one stage, their claims should be satisfied in proportion to the debt that owed to each creditor. For example, if after all stage one creditors, a CAE does not have enough assets to pay stage two creditors, then all stage two creditors would receive a percentage proportion of the debt owed to them. In this situation, third and fourth stage creditors, etc. would receive nothing.

Claims, submitted after the expiration of the one-month term from the moment of publication of the instigation of bankruptcy proceedings, will not be taken into consideration. Claims that are not satisfied due to inadequate assets are waived.

The information given above illustrates that bankruptcy proceedings are the worst way to restructure an enterprise. During bankruptcy proceedings all managerial functions concerning CAE activity and property are carried out by bodies created by creditors and an arbitration court. This means that CAE managerial bodies lose their managerial power within this period of time. Bankruptcy procedures are slanted toward satisfying the creditors' interests, not the interests of a CAE.

Property of a CAE that remains after the satisfaction of all of the creditors' claims and the claims of the CAE's members is transferred to the CAE or to an appropriate privatization body for sale.

5.6. Debt Recovery Relating to CAE Lands

According to Article 43 of the Land Code of Ukraine, CAE lands in the collective ownership of the CAE, upon a decision of an arbitration court can be used for the recovery of creditors' claims if a CAE does not have other property to be used for this purpose. Thus, a CAE can lose its lands or a part of its lands as a result of bankruptcy proceedings if the CAE's lands become the means to cover creditors' claims.

The law "On Collective Agricultural Enterprises" establishes that in the event of a CAE's bankruptcy, lands of collective use (such as soil protecting forest zones, or where roads are located, etc.) are transferred to the local Rada. Unfortunately, the laws "On Bankruptcy" and "On Collective Agricultural Enterprises" do not make a distinction between CAE lands which have been shared (through the issuance of land share certificates) and not shared among CAE members in terms of using CAE lands to satisfy the claims of creditors when other property is not sufficient. Thus, a CAE's agricultural lands, including those that were divided into land shares, could possibly be used for the recovery of creditors' claims. Hence, as a result of bankruptcy, the area of a CAE's agricultural lands could possibly be reduced or even lost completely. In turn, this could

reduce the size of the land shares of CAE members (determined in land share certificates) or can even annul completely such land share certificates.

In order to attempt to avoid the use of land to satisfy creditors' claims in bankruptcy proceedings, one of the following actions may be implemented during the process of CAE restructuring:

- issue State Deeds to Private Ownership of Land Parcels to every CAE member (this action would seemingly eliminate the possibility of using such lands to satisfy creditors' claims);
- secure through documentation that the agricultural land belongs to CAE members in common ownership; this should be done by means of concluding an agreement of common ownership, common disposal and common usage of land between the owners of land shares; or conclude a leasing agreement transferring the commonly owned land parcel by the group of co-owners into the leasehold possession of the CAE or another entity.

However, as mentioned above the laws "On Bankruptcy" and "On Collective Agricultural Enterprises" do not answer the question of whether or not lands which have been shared among CAE members (through the issuance of land share certificates) are subject to creditors' claims in bankruptcy if CAE property is not enough to satisfy creditors' claims¹⁹. This issue remains to be answered by the Supreme Rada, arbitration courts and everyday bankruptcy proceedings.

¹⁹ This same legal uncertainty in relation to shared lands applies in CAE voluntary liquidation proceedings when CAEs do not possess enough property to satisfy creditors' claims.

ANNEX A

LAND SHARE CALCULATION

Agricultural Land Sharing and Farm Restructuring in Ukraine

ANNEX A: LAND SHARE CALCULATION

1. Defining Land Under the State Deed to Collective Land Ownership

Land associated with the former collective farm is separated into four “use-categories:”

- Reserve Fund (RF) Land
RF Land remains under the jurisdiction of the farm collective (and its successor farms) and contains land distributed to farm workers, pensioners, and social sphere workers as subsidiary plots. These lands can be bought and sold. Individuals wanting to become individual farmers can also receive up to fifty (50) hectares from the Reserve Fund under “permanent use right” status.

The size of the Reserve Fund varies but cannot exceed 15% of the total land owned by the collective. The size and location of the RF is confirmed at a general meeting and authorized by the Village Council.

- State Fund (SF) Land
State Fund Land includes lands located within the boundaries of the farm which remains in state ownership. It typically includes lands such as forests, lakes, and rivers.
- Land Occupied by Buildings (OL)
Land occupied by buildings is determined and excluded from land available for sharing among eligible members.
- Collectively Owned Land (COL)
The total land available for sharing among eligible members of former collective farms

By defining total hectares associated with the former collective farm as TH, then:

$$COL = TH - RF - SF - OL$$

2. Calculating the Average Land Share

The value of a land share is calculated by dividing the monetary value of COL land by the number of people who have the right to a land share, according to the formula:

$$VLS = MVL / NP$$

where:

VLS = the average monetary value of a land share, hryvnyas

MVL = the total monetary value of farm land transferred into the enterprise collective ownership, hryvnyas

NP = the number of people having the right to a land share

In order to determine the size of a land share in conventional cadastre hectares, it is necessary to calculate the average monetary value of one hectare of farm land transferred into the CAE collective ownership, according to the formula:

$$AMV = MVL / COL$$

where:

AMV = the average monetary value of one hectare of farm land transferred into the enterprise collective ownership, hryvnyas

MVL = the total monetary value of farm land transferred into the enterprise collective ownership, hryvnyas

COL = the number of hectares of farm land included in the Collective Land Deed

The size of a land share in cadastre hectares is calculated according to the formula:

$$SLS = VLS / AMV$$

where:

SLS = the size of a land share in cadastre hectares

VLS = the average monetary value of a land share, hryvnyas

AMV = the average monetary value of one hectare of farm land transferred into the enterprise collective ownership, hryvnyas

It is noted that the size of the average land share (SLS) can also be determined by the formula:

$$SLS = COL / NP$$

The example provided in *Table A.1* further illustrates how the land share value and size can be directly calculated:

Table A.1: Example of Land Share Calculation

Monetary value of agricultural land subject to sharing, hryvnyas	Number of eligible individuals	Land Share value, hryvnyas (col. 1: col. 2)	Size of agricultural land subject to sharing, hectares	Total monetary value of one hectare of agricultural land subject to sharing, hryvnyas	Size of a land share in conditional cadastre hectares (col 3: col 5)
1	2	3	4	5	6
12,657,530	751	16,854	2610.3	4,849.1	3.48

All documents and calculations relevant to determination of land share size and value are subject to thorough review by Raion Land Resources Committee. The calculation results shall be considered by the CAE Committee and attested with the Commissioners' signatures, subject to further approval by the relevant Raion Administration.

3. Determining Monetary Value of Agricultural Lands Subject to Sharing

Step 1: A map classifying collectively owned land subject to sharing according to soil type shall be prepared. Usually, such a map will be scaled at 1:10,000.

The map provides the following information:

- boundaries of collectively owned land;
- boundaries of permanently used land;
- boundaries of soil types;
- codes of soil types;
- codes of land ownership forms and land categories;
- numbers and sizes of land parcels; and
- codes and sizes of soil types.

All the land that lies within the confines of the COL is classified into agro-productive groups according to soil type. Soil type depends on the fertility and topography of the land. Fertility is based on the humus content of the soil. Topography of the land is broken down into three major classifications: *level, medium, and steep sloping land*. In the regions in which the ALS Project is working, there exist ten soil classifications. Each classification is assigned a code outlined below:

Table A.2: Soil Classifications

Class. No.	Soil Descriptions
41d	- Podsol black soil of low degradation; and - Dark grey medium loam soil of high degradation.
53d	- Typical quality black, low humus soil; - Medium loam soil of high degradation; and - High quality black, medium loam soil.
55d	- Typical quality black soil; and - Black medium loam soil of high degradation.
56	- Typical quality black soil; and - Black soil of medium or high quality, medium washed of high degradation.
121	- Meadow black soil and its varieties of low salinization.
133	- Meadow soil and its varieties of low salinization
141	- Meadow bog, silty bog, and peat bog, undrained soil
165	- Meadow black soil and meadow and turf loam soil of medium and low solod; and - Solod Soils
209	- In-washed black soil and meadow black soil.
210	- In-washed meadow soil

Step 2: The COL is divided into four classifications according to the type of land use exercised on that land. The classifications are:

- Crop land;
- Perennial Plantings;
- Hay land; and
- Pasture.

The amount of land allocated to a particular form of land use is determined by

the farm management and is closely controlled by Raion Land Resources Department whose mandate is to effectively manage the land resources of the Raion. Thus, the area of land committed to each of the four types of land use does not change significantly over time.

Step 3: The monetary value of the COL is directly correlated with the amount of income that the land is expected to yield, which in turn is directly dependent upon the quality of the land as well as its use. It is therefore necessary to calculate the amount of income received from a single hectare of land under the four land use categories.

For each of the land use classifications, a table similar to *Table A.3* below is drawn up. *Table A.3* presents an actual farm example. *Table A.3, Column V* defines the annual income yielded, respectively, by one hectare of crop land, one hectare of perennial plantations, one hectare of hay land, and one hectare of pasture. Note that the agro-productive soil group 53d occurs in all of the four types of farm land, yet has different income figures (*Column III*) depending upon its use. These calculations were made based on historical information prior to the currency change to hryvnya. The figures set out below are based on prices for early 1988. The so called official USD rate was about 0.68 Soviet roubles. It should be noted that the average monthly salary at the time was about 170-200 roubles.

Table A.3: Income Calculations Based on Soil Groupings

I	II	III	IV	V
Agro-productive soil group	Area of land (ha)	Differential income (roubles/ha)	2x3	Average income (roubles/ha)
Crop Land				
41d	5.0	340.9	1,704.5	
53d	3,362.2	426.8	1,434,987.0	
55d	971.6	391.3	380,187.1	
121	5.7	361.1	2,058.3	
209	70.9	384.7	27,275.2	
210	2.0	396.0	792.0	
TOTAL	4,417.4		1,847,004.0	418.1
Perennial Plantations				
41d	0.6	425.5	255.3	
53d	59.3	605.9	35,929.9	
TOTAL	59.9		36,185.2	604.1
Hay Land				

53d	43.1	17.9	771.5	
55d	298.1	17.9	5,336.0	
133	3.4	62.8	213.5	
TOTAL	344.6		6,321.0	18.3
Pasture				
41d	6.9	11.3	78.0	
53d	2.2	11.3	24.9	
55d	69.2	11.3	782.0	
133	4.3	64.7	278.2	
209	7.2	64.7	465.8	
210	10.0	64.7	647.0	
TOTAL	99.8		2,275.8	22.8
GRAND TOTAL	4,921.7		1,891,786.1	

Step 4: Following these calculations, a further table similar to *Table A.4* below is drawn up for each of the four land types to determine the potential value of agricultural production from each land type by use classification.

Step 5: Once the farm price for a single hectare of land is known for each of the four land use classifications, the total price of farm land encompassed in the COL is calculated by multiplying the unit price of one hectare by the number of hectares set aside for each of the four land use classifications. These figures are set out below in *Table A.5*.

Step 6: The price of a single member's land share is determined by dividing the total farm price of the COL (*Table A.5, Column IV*) by the number of people entitled to the land shares. This is the figure that appears on the land certificate.

Table A.5: Total Price of Farm Land, Zorya Farm

I	II	III	IV
Land Type	Total Hectares	Price per Hectare, hryvnyas	Price of Land Type, hryvnyas
Crop land	4,417.40	4,308.0	19,030,159.2
Perennial Plantations	59.90	5,956.3	356,782.4

Hay land	344.60	816.4	281,331.4
Pasture	99.80	852.7	85,099.5
TOTAL			19,753,372.5

Table A.4: Land Type Chart

Agricultural Land	Soil Types		Differentiated Annual Income from One Hectare of Agricultural Land						Capitalization Period, years	Price for C Centner of C at the Time Calculatio mil. KBV
	Code	Area of Land (ha)	in Agricultural Enterprise, KBV	in the Administrative Rayon, centners	in the Administrative Rayon, KBV	in Agricultural Enterprise, centners (4x5):6	Lease Income, centners*	Total Lease Income, centners (7+8)		
1	2	3	4	5	6	7	8	9	10	11
Crop Land	52 c	114.5	309.1							
	52 d	18.5	349.8							
	53 d	2164.5	507.7							
	55 d	138.7	306.7							
	56 d	13.8	155.4							
	121 d	38.7	533.6							
	121 e	5.6	534.1							
	123 d	97.8	410.4							
	141 d	10.9	-73.6							
Total	×	2603.0	479.62	9.82	462.6	10.18	1.6	11.78	33.0	1.25
Pasture	55 d	0.8	31.0							
	121 d	1.0	72.0							
	123 d	5.1	72.0							
	141	0.4	54.8							
Total	×	7.3	66.56	0.52	24.7	1.40	1.6	3.0	33.0	1.25
Total Agricultural Lands	×	2610.3	×	×	×	×	×	×	×	×

ANNEX B

PROPERTY SHARE CALCULATION

Agricultural Land Sharing and Farm Restructuring in Ukraine

ANNEX B: PROPERTY SHARE CALCULATION

1. Defining the Property Share

The following formula is used to calculate the value of each individual's property share:

$$\text{ISR/TSR} \times \text{PSF} = \text{IPS}$$

where:

IPS= individual worker property share (monetary value and percentage value)

ISR = the individual worker historical salary earnings adjusted for inflation

TSR = total worker historical wage and salary remuneration

$$\text{PSF} = \text{LTA} + \text{STA} - \text{OFD} - \text{SIP}$$

where:

PSF = Property Share Fund

LTA = depreciated fixed and other long term assets

STA = other short term production assets (feed, fuel, etc.) on hand and accounts receivable at the time the property shares are calculated

OFD = outstanding farm debt including accounts payable and short and long-term loans

SIP= social infrastructure property

2. Calculating Individual Wages and Salary Remuneration (ISR)

The size of the property share represents the *quantity* and *quality* of the individual's work. *Quantity* reflects the number of years (length of service) that the individual has worked on the farm. *Quality* reflects the relative value (to the farm) of the work

represented by the salary remuneration received. For example, the quality of work performed by a chief economist receiving 200 Soviet roubles a month is considered to be twice that of a tractor driver receiving 100 Soviet roubles.

Under *stable conditions*, the relative sizes of property shares for each worker can be easily calculated by multiplying salary by length of service. A chief economist with a length of service of eight years ($200 \times 8 = 1600$), will have four times the property share of a tractor driver with a length of service of just four years ($100 \times 4 = 400$). The contribution, therefore, of the economist to the formation of the farm's working capital is four times greater than the contribution of the tractor driver. "Length of service" and "salary" information is collected for each worker of the farm participating in restructuring.

Whereas length of service information is quite easily obtained, "salary" information is more difficult as salaries were paid either "in kind" or "in cash," and under varying conditions of no inflation, low inflation, and high inflation. Collection of salary data, therefore, is divided into three separate categories.

Category 1: 1944-1965 - "in kind payments"

Category 2: 1966-1990 - "cash payments"

Category 3: 1991-1995 - "cash payments accompanied by high inflation"

Category 1: During the years up through 1965, collective farm workers were not paid in cash but "in-kind." The size of these "in-kind" payments was dependent on the number of work days an individual accumulated during the work year. To accommodate the various levels of responsibility entailed by each job, each work activity was assigned a "work day figure" ranging from 1-4. A chief economist would receive four work days for every day on the job, whereas a milk maid only two. Data sets of work days for each farm worker are available, but for the purposes of calculating property shares, "work days" have to be converted to a roubles equivalent to be compatible with "cash payment" salaries paid from 1966 onwards.

Conversion of "work days" to roubles occurs in the manner described below and may be best demonstrated by using tables.

Table B.1: Salaries Paid in Cash (1966-1990), Zorya Farm

I	II	III	IV
Year	Total Wages (roubles)	No. of Workers	Avg. Wages (roubles)
1966	1,136,000	1,203	944
1967	998,000	1,207	827
1968	948,000	1,255	755
1969	1,079,000	1,188	908
1970	1,012,000	1,109	913
1971	900,000	991	908
1972	884,000	1,040	850
1973	1,002,000	956	1,048
1974	961,000	1,048	917
1975	1,172,000	1,150	1,019
1976	1,266,000	1,219	1,039
1977	1,454,000	1,254	1,159
1978	1,589,000	1,272	1,249
1979	1,487,000	1,204	1,235
1980	1,444,000	1,215	1,188
1981	1,400,000	1,133	1,236
1982	1,440,000	1,056	1,364
1983	1,507,000	1,067	1,412
1984	1,505,000	826	1,822
1985	1,529,000	796	1,921
1986	1,385,000	769	1,801
1987	1,321,000	748	1,766
1988	1,451,000	756	1,919
1989	1,301,000	676	1,925
1990	1,319,000	516	2,556
TOTALS	31,490,000	25,654	1,227

During the years 1966-1990, salaries were paid in cash. *Column II of Table B.1* shows the total annual cash outlay for salaries during the year. *Column III* shows the total number of workers on the farm for the year, and *Column IV* shows the average salary a worker received for that particular year. The final row of *Table B.1* shows the average salary for a single worker between the years 1966-1990 as being 1,227 roubles.

Table B.2: Cost of Workday (1946-1965), Zorya Farm

I	II	III	IV	V
Year	No. of Workdays	No. of Workers	Avg. No. of Workdays	Cost of Workday (roubles)
1946	197,320	780	252.97	4.85
1947	218,352	828	263.71	4.65
1948	233,886	856	273.23	4.49
1949	235,389	865	272.13	4.51
1950	240,785	875	275.18	4.46
1951	242,933	840	289.21	4.24
1952	308,675	867	356.03	3.45
1953	293,357	865	339.14	3.62
1954	339,897	885	384.06	3.19
1955	379,132	887	427.43	2.87
1956	373,843	885	422.42	2.90
1957	401,983	875	459.41	2.67
1958	392,223	935	419.49	2.92
1959	372,946	925	403.18	3.04
1960	331,536	888	373.35	3.29
1961	352,341	785	448.84	2.73
1962	496,863	1,048	474.11	2.59
1963	495,551	1,075	460.98	2.66
1964	494,226	958	515.89	2.38
1965	534,303	1,220	437.95	2.80

It is assumed that the average worker's wage for the years prior to 1965 is the same as the average worker's wage for the years 1966-1990. Under this premise, the cost in roubles of a single work day for any given year (*Column V, Table B.2*) can be calculated by dividing 1,227 roubles (*Table B.1*), by the average annual number of work days completed by a worker (*Column IV, Table B.2*). Knowing the cost of a single work day for any given year and the total quantity of work days completed in that year, a worker's wage can be calculated and entered into a table similar to *Table B3*, below.

Table B.3: Example: Calculation of Total Wages per Worker

I	II	III	IV	V	...	VI	VII	VIII
		1946	1947	1948	...	1964	1965	Total Wages
	Value of 1 Workday	4.85	4.65	4.49	...	2.38	2.8	
Ivan Nechai	No. of Workdays	172.00	240.00	213.00	...	605.00	599.00	
	Wages (roubles)	834.20	1116.00	956.37	...	1439.90	1677.20	
Olexandr Holovnya	No. of Workdays	188.00	238.00	296.00	...	412.00	506.00	
	Wages (roubles)	911.80	1106.70	1329.04	...	980.56	1416.80	

Annual wages are summed together and the total amount of remuneration received during the years prior to 1965 is shown in *Column I, Table B.3*.

Category 2

During years 1965-1990, salaries were paid in cash, but economic conditions were *unstable*. That is to say that the amount of remuneration a person received was not an accurate reflection of the quality of work performed. These conditions arise under periods of variable farm productivity and inflation. They can be most readily demonstrated with the use of examples.

Table B.4: Salary Remuneration Comparison (Case 1)

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
Economist	200	200	80	100	100	200	200	200	200	200	1,680
Driver						100	100	100	100	100	500

In *Table B.4* above, the amount of money that the individual received is not a true reflection of the investment that the individual made towards formation of the farm's working capital. During the years 1983, 1984, and 1985, the economist received considerably less than normal, not because fewer hours or days were worked (although this is a distinct possibility) but because the farm was not able to pay the usual wage. In contrast, the driver, who started work in 1986, never experienced a pay reduction. On face value, the economist's investment is only 3.4 times that of the drivers, whereas it should be four times ($200 \times 10 = 2000$) if the economist would have been paid his normal wage during 1983-1985.

The exact same scenario can be witnessed under inflationary conditions.

Table B.5: Salary Remuneration Comparison (Case 2)

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	Total
Economist	200	200	350	350	400	200	200	200	200	200	2,500
Driver						100	100	100	100	100	500

Table B.5 indicates that the amount of money an individual received is not a true reflection of the investment in formation of the farm's working capital. In this case, the economist received considerably more than the usual wage during the inflationary years of 1983, 1984, and 1985. The apparent investment, then, is five times that of the driver who was not working at the farm during the inflationary years. If there had been no inflation and the economist had received his normal wage, the investment would be just four times that of the driver's.

For these reasons, it is necessary to use a coefficient to help to normalize variations or fluctuations occurring between years. This can best be explained by referring to *Table B.1* which is has been corrected using a coefficient outlined below in *Table B.6*. Note that data for the years 1991-1995 has also been included.

Table B.6: Coefficients for Normalizing Salary Fluctuations

I	II	III	IV	V
Year	Total Wages, roubles	No. of Workers	Avg. Annual Wages	Coefficient
1966	1,136,000	1,203	944	1.300
1967	998,000	1,207	827	1.484
1968	948,000	1,255	755	1.625
1969	1,079,000	1,188	908	1.351
1970	1,012,000	1,109	913	1.344
1971	900,000	991	908	1.351
1972	884,000	1,040	850	1.444
1973	1,002,000	956	1,048	1.171
1974	961,000	1,048	917	1.338
1975	1,172,000	1,150	1,019	1.204
1976	1,266,000	1,219	1,039	1.181
1977	1,454,000	1,254	1,159	1.059
1978	1,589,000	1,272	1,249	0.982
1979	1,487,000	1,204	1,235	0.994
1980	1,444,000	1,215	1,188	1.033
1981	1,400,000	1,133	1,236	0.993
1982	1,440,000	1,056	1,364	0.900
1983	1,507,000	1,067	1,412	0.869
1984	1,505,000	826	1,822	0.673
1985	1,529,000	796	1,921	0.639
1986	1,385,000	769	1,801	0.681
1987	1,321,000	748	1,766	0.695
1988	1,451,000	756	1,919	0.639
1989	1,301,000	676	1,925	0.637
1990	1,319,000	516	2,556	0.480
Subtotal	31,490,000	25,654	1,227	
1991	2,041,000	500	4,082	0.30059
1992	24,852,000	517	48,070	0.02553
1993	751,000,000	546	1,375,458	0.00089
1994	5,366,000,000	527	10,182,163	0.00012
1995	20,373,000,000	460	44,289,130	0.00003

Column IV of Table B.6 shows the average worker salary for each consecutive year. *Column V of Table B.6* shows the fraction that this annual average salary is of the average salary for the period 1966-1990. It represents the variance between annual salaries occurring in years of instability (i.e., production declines and inflation). It is this fraction that is used to correct individual salaries for every worker on the farm, as seen below in *Table B.7*.

Table B.7: Corrected Total Wages per Worker

I	II	III	IV	V	...	VI	VII	VIII
	Year	1966	1967	1968	...	1989	1990	Total Wages
	Coefficient	1.299	1.484	1.624	...	0.638	0.480	
Ivan Nechai	Actual Wages	1,148.00	1,336.00	883.00	...	1,436.00	2,739.00	
	Corrected Wages	1,491.25	1,982.62	1,433.99	...	916.17	1,314.72	
Olexandr Holovnya	Actual Wages	1,662.00	1,259.00	1,090.00	...	3,084.00	4,895.00	
	Corrected Wages	2,158.94	1,868.36	1,770.16	...	1,967.59	2,349.60	

The total corrected wage is summed for the entire period of 1966-1990 (as shown in *Column VIII, Table B.7*) and added to the total corrected wage for the period up to 1965 (as shown in *Column VIII, Table B.3*).

Category 3

Finally, during the years of 1990-1995 there was rampant inflation. Salary figures for this period are corrected for the same reasons and following the same methodology as explained above in “Category 2”.

Table B.8: Total Corrected Salary Figures

I	II	III	IV	V	VI	VII	VIII	IX
	Year	1990	1991	1992	1993	1994	1995	Total Wages
	Coefficient	0.48	0.301	0.026	0.001	0.0001	0.00003	
Ivan Nechai	Actual Wages	1,148	6,810	37,203	1,218,487	9,047,779	31,400,300	
	Corrected Wages	551.04	2,047.84	950.02	1,086.89	1,094.78	879.21	6,058.73
Olexandr Holovnya	Actual Wages	1,662	7,420	44,420	846,053	4,050,390	21,454,100	
	Corrected Wages	797.76	2,231.27	1,134.31	754.68	490.10	600.71	5,211.07

The total corrected salary figures for the years 1990-1995 are summed together and shown in *Column IX, Table B.8*. These figures are added to the corresponding figures for each worker in *Column IX of Table B.8* to acquire the total amount of remuneration (in hryvnias) received by the worker up to 1995. *Table B.9* shows the total amount of remuneration received by the two workers Ivan Nechai and Olexandr Holovnya.

Table B.9: Total Amount of Remuneration Received

I	II	III	IV	V	VI
		Category 1	Category 2	Category 3	Total
	Year	up to 1965	1966-1990	1991-1995	
Ivan Nechai		X	X	X	X
Olexandr Holovnya		X	X	X	X

3. Calculating Total Wages Salary Remuneration (TSR)

The sum of all individual salary calculations yields the farm total salary remuneration (TSR). The sum over individual salary remuneration figures (*Column V, Table B.9*) represents the total salaries paid to workers eligible for property sharing over their lifetime. Under most situations, this figure closely conforms to total labor expenditures of the farm over the period for which records were kept. However, in cases where present farms were created from another farm, or where farms were combined, the actual value of TSR may differ somewhat. However, conceptually TSR represents the total value of the eligible workers' contribution toward the net asset value (SHR), and not the total farm payroll. Thus, salaries of workers not eligible for property sharing must be excluded from the universe of workers on which TSR is based.

4. Calculating the Property Share Fund (PSF)

The Property Share Fund, as its name would suggest, is the total value of the property (excluding land) owned by the farm enterprise. It is made up of the following categories:

- fixed assets (equipment, buildings, machinery);
- current assets, including accounts receivable;
- company shares of other enterprises;
- debts outstanding.

To calculate fixed asset value, the following steps are followed:

Step 1: Prepare a detailed inventory of all equipment and buildings, including social sphere assets.

This process must be supervised by an independent outside farm appraisal consultant to ensure that all objects (particularly those of significant value) are included in the inventory and are valued in a responsible manner.

All objects should be entered into a table similar to the one outlined below in *Table B.10* where:

- Col. I:* The asset list number.
- Col. II:* The name of the asset.
- Col. III:* The physical location of the asset on the farm.
- Col. IV:* The year in which the asset was either bought, built, or first put to work on the farm.
- Col. V:* The asset inventory number as it appears in the farm inventory records.
- Col. VI:* The original purchase price of the asset converted to Soviet roubles.
- Col. VII:* The asset value after three official indexations. There have been three official indexations since 1991 to convert past values to present day equivalents. These indexations took place in 1992, 1993, and 1995.
- Col. VIII:* The annual depreciation, in percentage terms, based on the designated useful asset life. For example, if the object is expected to last forty years (i.e., a building) then one year represents 2.5% of its useful life.
- Col. IX:* The percentage of the useful life of the asset which has already been depreciated. For example, a building with a useful life of 40 years that has already been depreciated over 20 years will have used up $2.5\% \times 20 = 50\%$ of its useful life.
- Col. X:* Value of depreciation already taken.
- Col. XI:* Remaining value to be depreciated (depreciated book value). It is determined by subtracting *Column XI* from *Column VII*.
- Col. XII:* Calculated replacement value without depreciation. All machinery and equipment assets are revalued based on estimated replacement value. Building values may be equalized by valuing construction costs at constant 1984 values indexed for inflation.
- Col. XIII:* Observed depreciation of revalued asset. Actual annual depreciation using normal depreciation tables is adjusted by the estimated increase in asset life expectancy based on repairs undertaken.
- Col. XIV:* Current depreciated replacement value in hryvnyas. This figure is calculated by subtracting from the figure in *Column XII* the monetary value associated with the observed depreciation percentage shown in *Column XIII*.
- Col. XV:* Current depreciated replacement value in US\$.

Step 2: Obtain the total value of all fixed assets by summing over all entries in *Column XIV* of *Table B.10*

Step 3: Determine total net farm fixed (long term) asset value (LTA) by removing all

objects of the social sphere and any current farm assets that the Farm Restructuring Commission considers not suitable for inclusion as farm foundation assets.

It must be noted that the Local Administrations are not yet in a position to take on the financial responsibility of maintaining the objects of the social sphere. So, practically, this responsibility remains with the farm enterprise.

Step 4: Calculate short term assets (STA), outstanding farm debts (OFD), and net property share fund (PSF) using a table similar to *Table B.11* below.

Table B.11: Short-Term Assets, Outstanding Farm Debt, and Property Share Fund Calculations

Basic Data	Sum, hryvnyas
a) Property of the Farm:	9,429,817
Fixed Assets (LTA)	9,387,377
Current Assets (STA)	42,440
Other Property Including:	
b) Property that Cannot Be Shared:	341,436
Objects of the Social Sphere	341,436
Other Property that Cannot Be Shared	
c) Debts Outstanding (OFD):	95,280
Including:	95,280
d) Property Share Fund of the Farm (B-b-c)	8,993,101
e) Adjusted Wages Fund	201,471.85
f) Standard Share Rate (d/e)	446.40

Table B.10: Total Value of Fixed Assets

I	II	III	IV	V	VI	VII	VIII	IX	X
List No.	Name of Object	Location	Year of Purchase	Inventory No.	Actual Purchase Cost	Indexed Value	Annual Depreciation Taken	Total Depreciation Taken	Total Depreciation Taken
					(Soviet roubles)	(hryvnyas)	%	%	(hryvnyas)
	Farm Name								
1	Farm Office Building	Mynakovo	1976	659	61,317	17,246.2	1.2	22.8%	3,970.0
2	Granary	Knyazivka	1972	637	36,668	10,815.0	2.5	57.5%	6,380.0
3	Grain Warehouse 1000 ton capacity	Knyazivka	1994	450	3,585,700,000	502.0	2.5	2.5%	30.0
4	Grain Warehouse 500 ton capacity	Knyazivka	1962	638	17,071	2.9	2.5	82.5%	0.2
5	Grain Warehouse	Shyryaev	1969	630	15,051	4,317.4	2.5	65.0%	2,890.0
6	Tractor	Shyryaev	1992	60	337,975	36.6	10.0	30.0%	11.0
7	Combine	Shyryaev	1987	112	15,482	2,177.0	10.0	80.0%	1,741.6
8	Combine	Mynakovo	1988	113	7,901	1,110.9	10.0	70.0%	777.6
9	Welding Machine	Knyazivka	1993	120	30,900	20.1	16.0	32.0%	6.4
10	Scale	Knyazivka	1993	141	711,750	47.0	10.0	20.0%	9.4
11	Truck	Knyazivka	1991	160	38,703	5,442.0	0.37	1.5%	81.6