

**ACDI PRIVATIZATION PLAN  
FOR DAIRY FARMS**

**19 JUNE THROUGH 15 NOVEMBER 1995  
KOCH DAIRY MODERNIZATION PROJECT  
CHILIK RAION, ALMATY OBLAST,  
REPUBLIC OF KAZAKSTAN**

**15 NOVEMBER 1995**

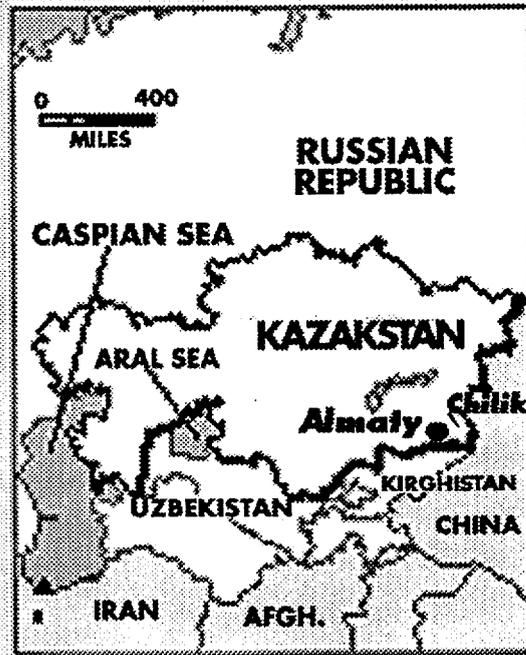
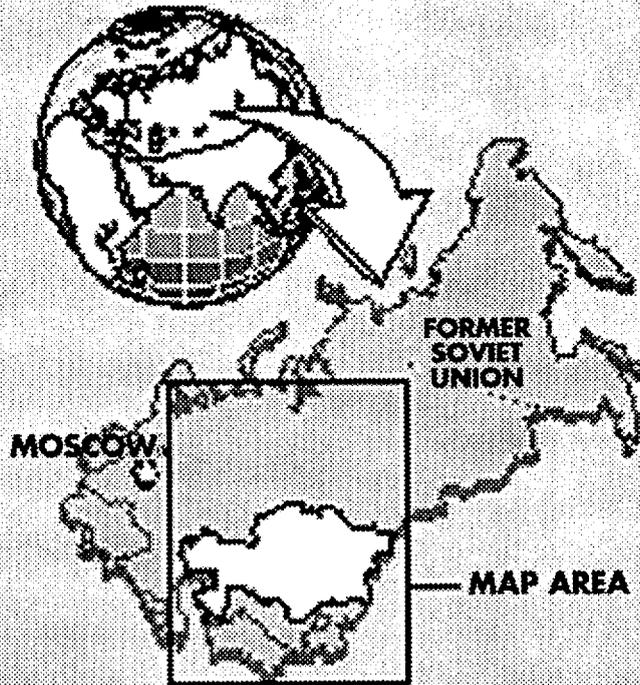
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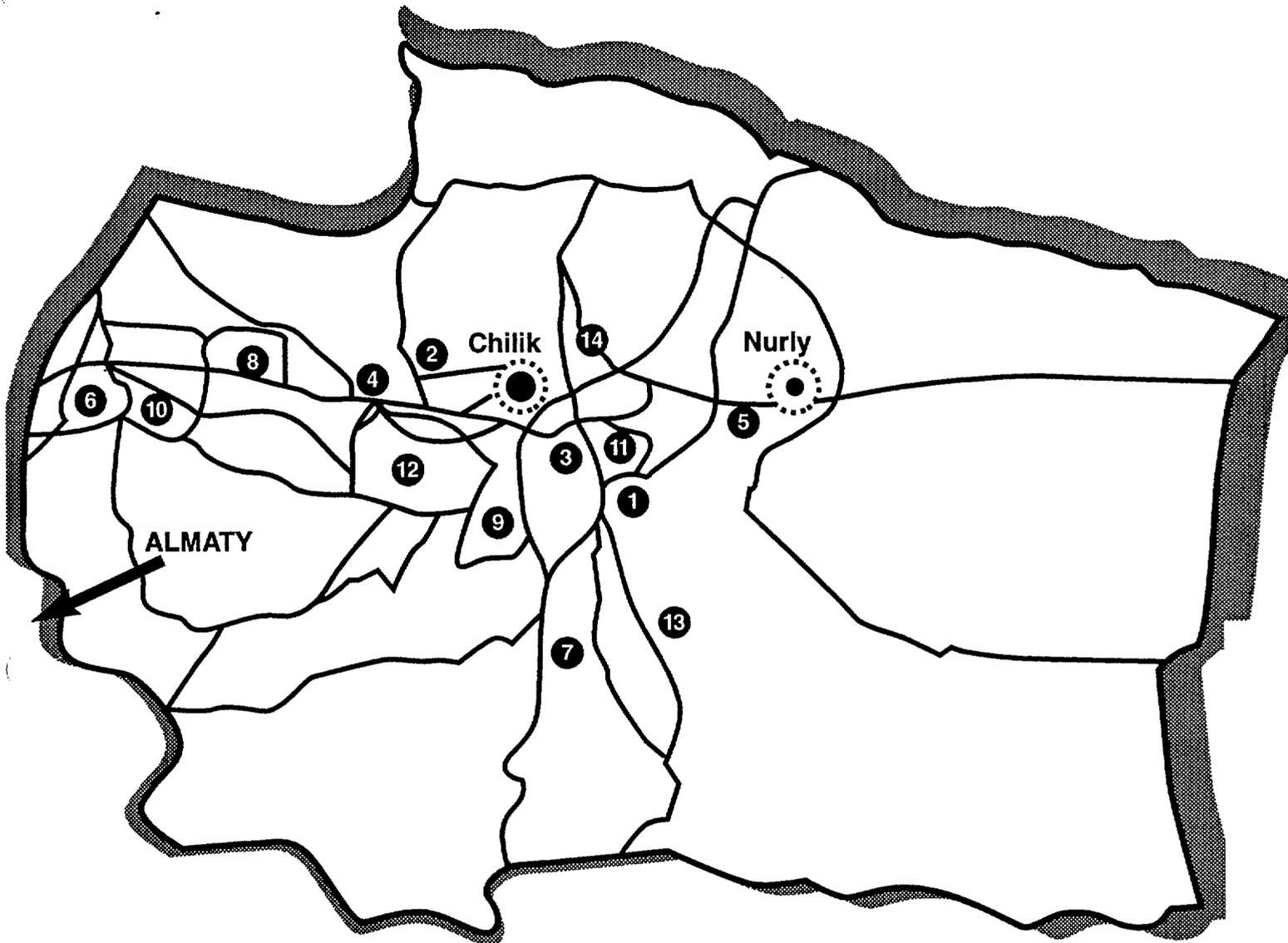
# ACDI Farm Privatization Initiative Republic of Kazakhstan Almaty Oblast, Chilik Raion



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# CHILIK RAION

## DAIRY FARM LOCATION MAP



**CHILIK RAION, ALMATY OBLAST**  
 Republic of Kazakhstan

<b>DISTANCES</b>	
Almaty to Chilik	116 Kilometers
Chilik to Nurly	33 Kilometers
Kazakhstan Farm (6) to Nurly	75 Kilometers

Nr.	Farm Center Name
1	Silk Way
2	Koram
3	Avanguard
4	Sattarov
5	Kenzhebayev
6	Kazakhstan
7	Myauk
8	Aschisi
9	Osinsky
10	Teskensu
11	Bartogi
12	Chilik Wine
13	Zenagharlee
14	Masauk

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**ACRONYM DEFINITIONS**

<b>ACRONYM</b>	<b>DEFINITION</b>
ACDI	Agricultural Cooperative Development International
CAAEF	Central Asian-American Enterprise Fund
CIS	Commonwealth of Independent States
EBRD	European Bank for Reconstruction and Development
FSRP	Food Systems Restructuring Project
GKI	State Committee for Privatization
KDE	Kazak Dairy Entity
KLE	Kazak Legal Entity
SCCOSP	State Committee for Control Over State Property
SCP	State Committee on Privatization
SHH	Salans Hertzfeld & Heilbronn
TDA	U.S. Trade and Development Agency
TERCOM	Territorial Committee of the State Committee for State Property
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
<b>MISCELLANEOUS TERMS</b>	<b>DEFINITION</b>
Oblast	Kazak administrative district, similar to a state
Mother farm	State-owned farm
Raion	Kazak rural district, similar to a county

**PREFACE:  
EXECUTIVE  
SUMMARY**



# ACDI PRIVATIZATION PLAN FOR DAIRY FARMS

19 JUNE THROUGH 15 NOVEMBER 1995

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## EXECUTIVE SUMMARY

As part of its Food Systems Restructuring Project (FSRP) for the Commonwealth of Independent States of the former Soviet Union (CIS), the United States Agency for International Development (USAID) approved a \$150,000 subgrant administered by Agricultural Cooperative Development International (ACDI) to develop recommendations and an implementation strategy for privatizing six of the eleven dairy farms in the Chilik Raion, Almaty Oblast, Republic of Kazakhstan. Five of these farms will participate in the Dairy Modernization Project developed by Koch Supplies Inc. of Kansas City, Missouri. The sixth farm will serve as an alternate should one of the original five farms be unable to participate.

Both the ACDI privatization initiative and the Koch dairy project have as their primary objective the restructuring of Kazakhstan's agribusiness sector along market-oriented lines. The Koch project was the catalyst for this ACDI privatization initiative and will serve as the vehicle for its initial implementation.

Duration of this ACDI privatization initiative was from 19 June to 15 November 1995. Within this timeframe, the six farms required for implementing the Koch dairy project were identified and their privatization process begun. As of 10 November, two of these six farms were officially registered as private legal entities with appropriate

government agencies; three of the remaining farms are in the process of submitting their required documentation to the government. Notification of their formal registration as private legal entities will follow within five days of final document submission which is expected before 15 November 1995.

The substitute farm, Aschisai, has suspended privatization efforts awaiting results from the initial five farms.

It is important to note that the ACDI mission was specifically to develop procedural and structural **recommendations** for privatizing the Chilik farms in a manner consistent with the democratic and business principles embraced by the Koch dairy project. The ultimate decision whether to adopt these recommendations is voluntary and lies entirely with individual farm directors and employees. Once the recommendations are adopted, the farm may then decide whether to participate in the Koch project.

Therefore, though a farm's participation in the Koch project is contingent upon adopting the ACDI privatization recommendations, a farm may privatize according to ACDI recommendations and still choose not to be involved with the Koch project.

Implementing the ACDI recommendations required a significant restructuring of the

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management and financial apparatus on each farm, as well as introducing new market-oriented concepts to farm members. Mr. Gerald Bahensky and other ACDI representatives worked on-site with Chilik Raion administration officials, individual farm directors, managers and employees on a daily basis for the duration of this initiative to educate them about these changes.

This hands-on participatory approach to developing and implementing ACDI recommendations gave farm members the opportunity to assist in the development of the recommendations and ultimately allowed members to make an informed choice about whether to adopt them. This approach proved to be the critical factor in achieving the goals of the privatization initiative in an efficient, expeditious manner.

## ACDI Privatization Initiative Background:

ACDI has been involved with the Koch Dairy Modernization Project since its inception in February 1994. Both ACDI and Koch have gained the respect and confidence of the Kazak government for their pioneering work in the region over the past two years. Almaty Oblast Governor, Mr. Umarzak Uzbekov, therefore requested that ACDI country director, Mr. Gerald Bahensky, head a joint US/Kazakstani commission comprised of representatives from Koch, the Kazakstani

government and local legal specialists to develop recommendations for privatizing dairy farms required for implementing the Koch project.

While numerous attempts have been made over the past five years to develop successful plans to privatize Kazakstan's agricultural sector, this ACDI initiative is unique for the following three reasons:

### 1. **Business Entity Driven:**

At the core of the initiative is a profit-making US/Kazakstani joint venture (the Koch dairy project) around which the privatization plan is structured. Past efforts have sought to first prepare a general privatization plan with the hope that this plan would foster future business development.

The ACDI initiative takes the opposite approach by starting with a business entity and using it as the catalyst for defining, implementing and demonstrating *in situ* a privatization plan conducive to market-oriented business activity.

2. **Methodology:** Enlisting grassroots involvement and support for the plan proved to the local population and government leaders ACDI's commitment to the democratic principles embraced by the project. Weekly site visits to each farm by selected commission representatives were made to insure that local government officials, farm directors, managers and employees had full knowledge

of the proposed privatization process, were directly involved in policy development and approved of its final implementation. During the course of this initiative, ACDI representatives made nearly 100 site visits to Chilik farms.

3. **Impact:** Immediate and long-term demonstrable results have made this privatization initiative of political and economic value to both Kazakstan and US exporters of agriculture-related technology and equipment. These specific benefits are:

- Two farms have been privatized in accordance with Western business standards with three more farms in process. This lays the groundwork for complying with a Presidential Decree to privatize Kazakstan's agricultural sector in a uniform manner by the end of 1996;

- Privatizing these farms according to ACDI recommendations fulfills a crucial requirement for financing the Koch Modernization Project, potentially triggering \$10.0 million in foreign investment and an initial \$8.0 million in US exports as the Koch project is brought on-line;

- New agricultural and collateral concepts have been introduced to local banks that will allow farms better access to capital and investment for new equipment and services. Specifically, accepting movable property such as livestock and land dedicated to agriculture as

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collateral will bring Kazakstani lending institutions more online with their Western counterparts;

- The replicable structure of the privatization procedure developed by ACDI is a practical model for future agricultural privatization throughout Kazakstan's agricultural sector;

- Pending Kazak legislation has been modified, particularly with regard to new cooperative laws, as a result of lessons learned from implementing the ACDI initiative. Legal specialists involved with this privatization initiative advised the Kazakstani Cabinet of Ministers in September 1995 and directly influenced the new legislation. This legislation pertains to the formation of Production Cooperatives in general, so the impact of the ACDI initiative will benefit future privatization efforts in all industries;

- A follow-up evaluation to determine the long-term effectiveness of this initiative is anticipated after a six- to twelve-month probationary period in which the privatized farms are allowed to operate under their new structure. Implementation of this case study will be dependent upon securing appropriate funding and resources.

### Conclusion:

The following report describes the rationale for and process involved with developing and implementing

the ACDI farm privatization initiative. This report, along with the successful privatization of the six farms in the Chilik Raion, represent the deliverables required under terms of the USAID subgrant that funded this initiative.

ACDI wishes to thank the government of the Republic of Kazakstan for its support in successfully implementing this important initiative within the initiative's ambitious time horizon.

In particular, Almaty Oblast Governor, Mr. Umarzak Uzbekov, and Chilik Raion Administration Director, Mr. Yeleusiz Sultangaziyev, are to be commended for the leadership they demonstrated throughout this initiative. It is a result of their foresight that progressive business and democratic principles were allowed to inform this privatization effort.

**PRIVATIZATION  
PLAN RATIONALE**



# ACDI PRIVATIZATION PLAN FOR DAIRY FARMS

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## PRIVATIZATION PLAN RATIONALE

Request was made for this USAID subgrant specifically to fulfill the following Kazakstani government and Koch dairy project demands:

### 1. *Kazakstani*

**Government Initiative:** In May 1995, Governor of the Almaty Oblast, Mr. Umarzak Uzbekov, authorized the formation of a joint US/Kazakstani commission to prepare a plan for privatizing dairy farms participating in the Koch Dairy Modernization Project. This authorization was made to expedite implementation of the dairy project and in an effort to fulfill, in a timely and practical manner, a Presidential Decree mandating privatization of Kazakstan's agricultural sector by the end of 1996.

The Kazakstani government realizes that privatization in agriculture must result in the formation of autonomous legal entities with financial and management structures based upon market-oriented business principles if Kazakstan is to attract investment crucial for rebuilding its moribund agricultural sector. The Koch dairy project was selected as the best means to meet this objective in a manner consistent with the government's free-market economic policies. Once operational, the privatization recommendations developed by ACDI are intended to be replicated, serving as a template for privatization reform throughout Kazakstan.

**2. Requirement for Dairy Project Financing:** The APEX Unit of the European Bank for Reconstruction and Development (EBRD) and the Central Asian-American Enterprise Fund (CAAEF) are the outside sources of financing for the Koch dairy project. Both require that all entities receiving direct financing or benefitting indirectly from their financing must be private legal entities. In addition, these entities must be structured in a manner that allows standard Western financial analysis and review to be conducted. Project financing was therefore contingent upon meeting these requisite criteria.

### 3. *Viable Business*

**Operations:** Privatizing farms into a structure based upon conventional Western legal and business principles is essential for insuring their long-term profit-making potential. Establishing transparent business and financial management mechanisms permits necessary oversight and accounting control over debt servicing, production costs and reinvestment critical to the farms' long-term viability as private business enterprises.

The dairy modernization project is structured such that Koch Supplies Inc., its Kazakstani joint-venture partners and the Central Asian-American Enterprise Fund (CAAEF) have equity ownership in a Kazak legal entity referred to as the Kazak Dairy Entity (KDE). This KDE is the core business entity of the entire dairy project. It is responsible

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for processing of raw milk into high-quality finished products and the marketing, distribution and sale of those products. The five participating dairy farms are private entities independent of the KDE. Each farm has a 1% ownership share in the KDE, with each farm having a contractual relationship with the KDE for farm equipment leases and raw milk sales.

In order to have a sound, legally binding basis for the equity ownership structure of the KDE, leasing and contractual agreements between the KDE and the dairy farms, as well as between the dairy farms and other local business, the farms must be private and uniformly structured in accordance with Western business standards. This will allow all entities participating in the Koch dairy project to conduct business within accepted market-oriented guidelines.

Such a structure also allows the KDE (as the entity ultimately responsible for the project's success) the leverage for controlling the quality and quantity of the raw milk supplied to its processing facilities by the farms.

Ultimately, to insure the long-term financial viability of the privatized farms, the dairy production assets will have to be separated from the former collective farm and structured as an independent private business entity. The other production units comprising the collective farm will likewise be separated as independent

agricultural units, each with its own profit-making potential and responsibilities. This break-up of the collective farm structure as conceived under the Soviet system is necessary since it is simply too inefficient and cumbersome for conventional business operations. The decision of when to separate the dairy and other production units will be made by respective farm management.

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**HISTORY OF THE  
KOCH DAIRY  
MODERNIZATION PROJECT**



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### HISTORY OF THE KOCH DAIRY MODERNIZATION PROJECT

In February 1994, Koch Supplies Inc. was awarded a subgrant from ACDI under the USAID Food Systems Restructuring Project (FSRP) to develop a comprehensive plan for modernizing the dairy industry in the Almaty Oblast, Republic of Kazakstan, along market-oriented lines. Subsequently, Koch obtained a grant from the US Trade and Development Agency (TDA) to prepare a detailed business plan to secure funding for the dairy modernization plan it had developed.

Approved by the Kazak Republican government for implementation, the Koch plan proposes a small-scale vertically integrated dairy system to be located in the agricultural region of Chilik (Chilik Raion) approximately 120 kilometers east of the capital city of Almaty. This vertically integrated system is designed to produce a variety of dairy products of international quality for domestic and export markets. Once operational, it will serve as a replicable model for restructuring Kazakstan's entire dairy industry.

The business plan for the dairy project received soft commitments from the APEX Unit of the European Bank for Reconstruction and Development (EBRD) and the Central Asian-American Enterprise Fund (CAAEF) to provide project financing. This financing is, however, contingent upon privatizing the participating dairy farms as credible business entities in

accordance with conventional Western financial and legal standards. Farm privatization is also a requirement of the USAID/ACDI Food Systems Restructuring Project.

In order to help secure this financing, expedite project implementation and assist the Kazakstani government in developing a workable model for privatization of its agricultural sector, Almaty Oblast Governor Uzbekov initially proposed this ACDI privatization initiative, guaranteeing full Kazakstani government support for its development and implementation.

The Almaty office of ACDI prepared a proposal in May 1995 for a USAID-FSRP subgrant to fund this initiative. The proposal was accepted, work started on 19 June and privatization of the five participating dairy farms is expected to be completed by 30 November. Groundbreaking for the Koch project is scheduled for December 1995.

Structured as a US/Kazakstani joint venture valued at \$11.0 million, Koch is making a \$1.8 million contribution as a major partner in the joint venture. The Koch investment is in the form of a \$1.0 million cash injection and contribution of all previous project development work, feasibility studies and business plan in whose preparation Koch has expended \$800,000 over the past two years. The Central Asian-American Enterprise Fund (CAAEF) has agreed to a

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\$3.0 million equity investment with the APEX Unit of EBRD providing a \$5.9 million loan.

Investment capital will be used to modernize five dairy farms in the Chilik Raion, remodel an existing dairy processing facility in Nurly, build a new multi-product dairy processing facility in the Chilik district and develop a dairy product marketing, distribution and sales network. The Koch project represents over \$8.0 million in US exports. Additional exports will be leveraged accordingly as the project is expanded and replicated throughout the region.

A \$700,000 FSRP subgrant has also been approved by USAID to cover project startup training on the dairy farms and at the processing facilities, as well as for Kazakstanis involved with marketing, distribution and sales. The Almaty office of ACDI will be responsible for administering these funds and for managing the training program supported by this FSRP grant.



**PROJECT COMMISSION  
FORMATION AND SUPPORT**

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## PROJECT COMMISSION FORMATION AND SUPPORT

Under the direction of Mr. Bahensky and Almaty Oblast Governor, Mr. Uzbekov, a commission comprised of US and Kazakstani specialists was assembled two weeks prior to project initiation on 19 June 1995 (refer to Exhibit 1). This commission was formed to oversee and encourage potentially recalcitrant local officials to follow through with those ACDI-directed privatization recommendations that might be unfamiliar to them.

The Governor and Deputy Governor of the Almaty Oblast, as well as the Director of Administration for the Chilik Raion, were necessary participants for the above reason, as well as for their thorough grasp of the aims of both the Koch dairy project and the ACDI privatization initiative. Since the State Property Committee (GKI)<sup>1</sup> is responsible for devolving ownership of State property into private hands, their direct involvement in the ACDI initiative was crucial. In the case of agricultural enterprises, this is a procedure conducted by the Oblast level GKI representative which, in the case of the ACDI initiative, is the Almaty Territorial Committee for State Property (TERCOM). Therefore, it was imperative that a representative from TERCOM, as well as its local representative from the Chilik Raion, be included in the commission. These above representatives comprised the Kazakstani portion of the privatization commission.

US representatives of the commission consisted of two on-site Koch representatives seconded to ACDI, two ACDI contract employees and the Western law firm, Salans Hertzfeld & Heilbronn (SHH), based in Almaty. These representatives had the following areas of specialization: farm co-op development, financial modeling and analysis, US/Kazakstani governmental relations and Kazakstani privatization law. The ACDI office served as commission headquarters for the duration of the initiative. Work commenced on 19 June.

At the initial organizational meeting held on 20 June at Almaty Governor Uzbekov's office, Mr. Uzbekov pledged support from the highest levels of the Kazakstani government for this privatization initiative. Specifically, he stated that if existing Kazakstani law ran counter to recommendations made by the commission for structuring the farms in accordance with Western market-oriented principles, the government would make every effort to modify the law to accommodate these recommendations.

While a review of current legislation by SHH affirmed that no changes would be necessary, commission members were aware that privatization law is still somewhat in flux, as is all law in Kazakstan. Mr. Uzbekov's pledge of government support insured that the ACDI initiative would be insulated from any

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unforeseen changes in the Kazakstani law.

<sup>1</sup> The GKI was formerly made up of the State Committee for Control Over State Property (SCCOSP) and the State Committee on Privatization (SCP). As of April 1995, the GKI ceased to exist when it was split into the SCCOSP and the SCP. The SCCOSP is represented locally by Territorial Committees (TERCOMS); the SCP is represented locally by so-called privatization committees.

The SCCOSP and its local TERCOMS represent the interests of the State as regards property owned by the Republic of Kazakstan and act as owners of the property on behalf of the State. SCCOSP has the right to delegate rights of ownership, usage of State property to State institutions and to businesses within the territory of the Republic of Kazakstan.

The SCP and its local committees are responsible for privatization, to include property transfer, purchases of State property by legal entities, auctions and tenders. SCP supervises activities of investment funds during the process of mass privatization (coupon or voucher sales), regulates and coordinates auction procedures, and provides public notices of auctions and tenders.

Because actual dissolution of GKI required a transition period of several months during which time the ACDI initiative was operational, this report makes reference only to GKI and TERCOM since for all intents and purposes these were the agencies responsible for approving farm privatization according to ACDI recommendations.



## **PROJECT OBJECTIVES**

# ACDI PRIVATIZATION PLAN FOR DAIRY FARMS

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## PROJECT OBJECTIVES

This ACDI privatization initiative had the following project-specific objective: To establish a privatization structure that fosters a fair business environment within which the Kazak Dairy Entity (KDE) and related business development can flourish. This structure had to embrace the principles of transparency, competition, fair play, individual participation, accountability and wealth creation and have grassroots support.

Restructuring the social services network on the State farms falls outside the purview of this privatization initiative. Until there exists an infrastructure of thriving small- and medium-sized profit-making private enterprises that can be taxed by local and national governments, there will be no money available to support a social services network.

Therefore, the purpose of this privatization initiative was to establish for the first time in Kazakhstan's agricultural sector the permanent foundation upon which wealth- and job-creating private agricultural enterprises can freely develop and from which tax revenues can ultimately be generated.

In the transition period between the currently bankrupt social services system and any future system funded through taxation, the members of the participating privatized dairy farms will determine how the social services needs of their particular farm will be met.

Farm revenues generated from the bi-weekly milk payments by the KDE will provide one means for financing these short-term needs.

The privatization structure developed by this initiative will enable these dairy farms, at their managements' discretion, to separate from the collective farm either at the onset of privatization or at a future date. This will permit the farm to achieve its greatest profit-making potential.



# **PROJECT LOGISTICS**

# ACDI PRIVATIZATION PLAN FOR DAIRY FARMS

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## PROJECT LOGISTICS

The Almaty office of ACDI served as the operational center for the privatization effort. The law office of Salans Hertzfeld & Heilbronn (SHH) in Almaty was the site for bi-weekly organizational meetings for commission members. Minutes of these meetings were circulated to commission members and to Almaty Oblast Governor Uzbekov and Deputy Governor, Mr. Serik Umbetov, to provide the government regular progress reports on the privatization process.

Commission members assigned to make weekly farm visits were debriefed at SHH offices in Almaty upon returning from Chilik on Friday evenings. New assignments and objectives for the following-week's farm visits were set after these debriefings.

Day-to-day staff work at SHH offices was restricted to assembling and reviewing appropriate documentation to determine each farm's legal and financial status, translating this material, researching Kazak civil codes and preparing specific structural and procedural recommendations for each farm to effect its privatization in accordance with ACDI objectives.

The SHH final deliverable is the standardized foundation documents for the dairy farm Production Cooperative in English, Russian and Kazak language versions (refer to Exhibit 6). From this draft charter document, each dairy farm may make modifications

to fit their individual and unique situations.

ACDI and Koch personnel provided project oversight, made weekly site visits to farms and coordinated all procedural matters among farm managers and employees, Almaty Oblast and Chilik Raion Administration officials, GKI and TERCOM Committee representatives.

### Privatization Timeline:

At the commission's first organizational meeting on 20 June, the following project timeline was adopted:

*22 June:* SHH delivers due diligence documentation checklist (refer to Exhibit 2) to ACDI office;

*20-27 June:* Commission members from ACDI and Koch gather due diligence documentation from eleven Chilik farms for delivery to SHH offices by 7 July.

ACDI legal counsel and SHH review current privatization legislation (refer to Exhibit 3) and draft recommended changes for additional legislation necessary to implement privatization of dairy farms;

*3-17 July:* ACDI legal counsel and SHH prepare recommended legislative changes and deliver to the ACDI and Koch commission members who return to Chilik farms to facilitate their implementation;

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3-24 July: ACDI legal counsel and SHH review documents for each farm and make lists of written requirements for each farm to begin its privatization process;

25-27 July: ACDI legal counsel SHH prepare list of requirements for ACDI and Koch representatives to convey to each prospective dairy farm;

15-31 July: Based upon ACDI and SHH recommendations and requirements list, members of prospective dairy farms draft implementation plans for their farm's privatization;

31 July-11 August: ACDI legal counsel and SHH review dairy farms implementation plans for approval as is or for conditional approval based upon further ACDI/SHH recommendations;

9 August-30 September: Dairy farms, with assistance as required, submit final privatization plans to TERCOM officials in Almaty. Farms can implement privatization plan following TERCOM approval;

15 October-15 November: Commission submits project summary document to ACDI; SHH submits to ACDI complete translations of Production Cooperative charter formation document in English, Russian and Kazak language versions.

### Informing/Educating Farm Members About ACDI Privatization:

The most challenging and critical aspect for success of the privatization initiative was the weekly farm visits by ACDI and Koch personnel. It was at these meetings that farm directors, managers and employees were introduced to the market-oriented and democratic concepts embodied in the Koch dairy project and ACDI privatization recommendations.

Up to this point, farm directors and employees were poorly informed about the meaning, available legal structures, advantages and long-term effects of privatization in agriculture. With virtually no guidance available from either government officials or historical precedent, efforts at farm privatization prior to the ACDI initiative had been carried out on a fragmented, ad hoc basis with farm directors left to devise their own privatization schemes. This resulted in the formation of pseudo-privatized entities mirroring the inefficient centralized management structure of the former Soviet State-run system that privatization is supposed to eliminate.

Therefore, following the commission's first organizational meeting on 20 June, ACDI and Koch personnel devoted three to four days out of each week to on-site farm visits to educate farm members about the proposed

ACDI plan and elicit their support. This regular presence on the farms also insured the necessary momentum was maintained for complying with the initiative's aggressive schedule.

Initial visits were held with a farm's director and his staff of managers. The attending managers typically consisted of the chief economist, chief accountant, chief herdsman and chief veterinarian.

At these meetings, the details of both the Koch Dairy Modernization Project and the ACDI privatization initiative were presented. It was then explained that participation in the Koch project required that a farm privatize in accordance with the conventional Western business structure being developed by the ACDI privatization commission. The other incentive for privatizing in a manner consistent with ACDI recommendations is that even if the farm chose not to participate in the Koch project, it would have the proper business and legal structure for attracting Western investment and securing local agricultural financing. Finally, it was made clear that participating in both the ACDI initiative and Koch project is strictly voluntary; that while ACDI and Koch have the full support of the Kazakstani government, the decision to accept the ACDI recommendations and to participate in the Koch dairy project rests exclusively with the farm members themselves.

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Once the farm leadership felt adequately informed, ACDI representatives were invited to make similar presentations to all farm members on a weekly basis. These meetings were held at each farm's makeshift auditorium and lasted anywhere from one to three hours. In form and content, these gatherings resembled US-style "town meetings." Views were freely expressed, questions answered, and consensus eventually formed.

In the process of holding these weekly town meetings, most farms took it upon themselves to form their own three- to four-member committees responsible for working with ACDI's Kazakstani legal counsel to assemble documents required for carrying out the privatization procedure. These so-called "farm territorial committees" greatly expedited the privatization process while allowing the town meetings to continue unabated.

With such grassroots involvement from the outset of the ACDI initiative, the task of achieving farm member approval of the ACDI recommendations proved much less daunting than originally anticipated.

It is, therefore, highly recommended that future privatization efforts, regardless of economic sector or geographic region, employ this town-meeting approach. In addition to providing the most reliable means for preparing a practical, workable privatization

plan that will indeed be implemented, these meetings serve as an object lesson for CIS citizens in the very democratic principles that form the basis of true market-oriented economies. Specifically, gaining practice in decision making, bottom-up delegation of authority and consensus formation provides the necessary tools for guaranteeing that a privatization structure, once implemented, will survive over the long term.

**ACDI FARM  
PRIVATIZATION  
METHODOLOGY AND  
COMMISSION RECOMMENDATIONS**



# ACDI PRIVATIZATION PLAN FOR DAIRY FARMS

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## ACDI FARM PRIVATIZATION METHODOLOGY AND COMMISSION RECOMMENDATIONS

### Methodology:

The ACDI privatization commission made every effort to successfully direct this initiative without getting mired in micro-managing the decision-making process on each farm. This was accomplished by defining objectives critical for the implementation and sustainability of the Koch dairy project. Once defined and presented to farm members on a regular basis, the responsibility for and means of meeting those objectives was left to the farm members themselves. Commission members were available on site each week for political, legal and business consultation to insure that farm members were kept informed and the privatization process remained on track.

The following five objectives were set by ACDI commission members as necessary steps for successful farm privatization:

**1. Define Viable Dairy Farm Structure:** Since the newly privatized farms are expected to function as autonomous business entities, commission members had to decide what specific farm assets are essential for sustaining profitable conventional dairy farm operations.

Based upon recommendations from dairy farm specialists involved in developing the Koch Dairy Modernization Project and from the officials from the

Kazakstani Ministry of Agriculture, the commission concluded that each private dairy farm must be comprised of the following components:

- a. Dairy cow and raw milk production assets;
- b. Feed crop production assets, including sufficient crop lands to support current and projected dairy herd feed ration requirements.

Reliable access to adequate quantities of feed for the dairy cows is the critical component for producing raw milk in the quantity and quality demanded by the Koch project. Dairy farm management must, therefore, have absolute control over cost, availability, raising, harvesting, storage and preparation of feed rations to maintain consistently high production levels and not be in a position of being held hostage to a third-party feed producer.

By combining these two farm components into a single entity, all farms privatized under the ACDI initiative would have the necessary physical assets required for self-sustaining dairy operations.

**2. Legal Structure:** An appropriate legal structure for privatizing the dairy farms had to be identified which would allow maximum management control and profitability at each farm. Commission members discussed advantages and disadvantages of the various forms of private legal entity permitted under Kazakstani law. The possible legal

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structures according to current Kazakstani law are: a) joint stock company, b) partnership, c) limited liability partnership, d) association and e) production cooperative.

Following recommendations from ACDI, the commission selected the Production Cooperative as the most suitable legal structure for the privatized farms (a detailed rationale for this decision appears in "Kazakstani Legal Basis for Privatization," pages 21 through 23). This Production Cooperative structure reflects the financial and business management characteristics of US agricultural cooperatives that have a long history of proven success. It is also the most democratic in nature in that individual participation is its primary organizational principle: Only those who actually work on the farm can manage, have ownership in and partake in a share of the profits from the cooperative. This structure contains its own system of checks and balances while precluding the possibility of an outside "raider" taking control of the farms.

### 3. *Equanimity of Cooperative Share*

**Distribution:** Through a system of property exchange monitored by ACDI legal counsel in Almaty, cash-starved cooperative members receive their ownership shares in the Production Cooperative in proportion to their property contribution.

### 4. *Proportional Farm Debt Obligation:* Farm units

separating from the State-owned farm to form an Production Cooperatives accepted a proportional amount of total farm debt as a condition of their separation agreement.

**5. *Voluntary Participation:*** Participation in this privatization plan is strictly voluntary. Farm employees, on an individual basis, choose whether to contribute property and join the new Production Cooperative.

### **Initial Legal Status of Participating Farms:**

A 1994 Presidential Decree mandates that all farms in Kazakstan must be privatized by the end of 1996. While this decree is important for enunciating government policy, the government did not recommend a comprehensive strategy for fulfilling this mandate. Individual farm directors have been left in the unenviable position of having to devise their own privatization schemes based upon their admittedly limited understanding of privatization law and market economics.

Consequently, at the beginning of the ACDI initiative, commission members found farms in the Chilik Raion in various stages of privatization. At one extreme were farms that had maintained their State-owned status. Their directors had adopted a wait-and-see attitude about privatization, unwilling to privatize without

having some assurance that doing so would actually improve the economic prospects of their farm and its members. At the other extreme were farms that had privatized but in ways unsuitable for sustainable business operations. In both cases the centralized power structure of the former Soviet system had been maintained, perpetuating inefficient production-based management practices and opaque financial accounting systems. These conditions were a significant impediment to achieving profitable operations and were serious disincentives to attracting the foreign investment or local financing necessary for restructuring the region's agricultural sector.

### **Restructuring State-Owned Farms:**

State-owned farms are characterized by a top-down, command-and-control management system headed by a single director with a staff of specialists responsible for overseeing the farm's numerous agricultural production activities. Milk and feed-crop production are the predominant, but not exclusive, activities at the Chilik farms. Various combinations of tobacco, fruit, vegetable and cereal grain production along with farm machinery operations and maintenance account for the balance of farm activities. In addition to agriculture-related components, these State farms also operate their own infrastructure of health and social services for farm

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workers and their families.

Creating private dairy farms from these State-owned entities required separating or spinning off the milk and feed-crop production units (including crop land) from the "mother" farm and then combining these two units into a single, private, legal entity entirely separate from the mother farm. This was done to insure that revenues generated from dairy operations of the newly formed private entity would pass back directly to the dairy entity itself and not be diluted by costs and obligations associated with other units of the mother farm.

Under this scenario, the newly privatized dairy farm is independent from the mother farm; it has its own management personnel and financial accounting systems structured in accordance with ACDI recommendations. Members of the privatized farm are therefore responsible for meeting their own health and social services needs, whether by paying for those services to existing providers or establishing their own network of providers.

As an alternative or transitional step, some entire State-owned farms were reorganized into a single Production Cooperative. When restructured in this manner, the privatization committee insisted that separate accounting and cash accounts were maintained for each business unit within the Cooperative. The long-term objective is to spin off non-dairy units from this new

Production Cooperative as they become viable businesses.

### Restructuring Pseudo-Privatized Farms:

Those farms that had already gone through their own version of "destatization" and which now considered themselves private entities had done so in a manner unsuitable for the Koch dairy project and were, in reality, private in name only. Actual operations, governance and administrative functions of these pseudo-private farms remained unchanged from the previous State-owned entity. Decision making authority still resided with the director. Financial accounting and cash management achieved no transparency. Accounting and management by business unit was not achieved.

Typically, these farms had privatized in the following manner:

1. A formal tallying or calculation of State-farm property was made;
2. Property was distributed among farm members;
3. Individual production and service units from the mother farm were formed into separate, private, small enterprises and/or peasant farms;
4. These small agricultural enterprises were then re-united into a single association of private enterprises;

5. The director and management staff from the former State-owned farm now became the director and management staff of the new private association of small enterprises.

Therefore, this initial attempt at privatization did not result in organizations that function as independent, Western business entities. More importantly, these pseudo-private structures are unacceptable to foreign investors or financing institutions, making them unlikely means for attracting capital. (Partly for this reason subsequent Kazakstani legislation no longer recognizes these associations of small enterprises as legal entities.)

Restructuring these pseudo-private farms was accomplished by developing a mechanism for combining all property, feed-crop land and employees necessary for productive dairy farm activity into a single legal entity, identical in structure to the entities formed by spinning off units from State-owned farms. The steps for carrying out this restructuring appear in Exhibit 5.

The most problematical aspect of this procedure was to reestablish the original dairy herd. When property was distributed as part of the first privatization process, individual dairy cows were given to farm members and became their personal property. Convincing these individuals to surrender their ownership rights of these cows and contribute them to an

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as yet unformed Production Cooperative in exchange for ownership shares in the Cooperative was the responsibility of the respective farm members. ACDI representatives explained the rationale behind this plan during repeated site visits, but the actual lobbying was successfully carried out by farm members themselves.

### Privatization Procedure:

The following operational steps were taken by ACDI commission members to initiate and fulfill the privatization process:

1. Assemble and examine all appropriate due diligence material from the eleven farms in the Chilik Raion. Deliver documentation to the law offices of Salans Hertzfeld & Heilbronn (SHH) in Almaty for photocopying, translation and evaluation. Based upon this documentation, each farm's legal structure and financial status was determined;

2. Determine the legal framework necessary for obtaining free and clear title to all necessary farm property;

3. Develop the business criteria for the dairy entity to be legal and self sustaining;

4. Develop a uniform business structure (Production Cooperative) for both State-owned or pseudo-privatized farms that meets the above criteria.

The law office of SHH prepared the farm document due diligence list at the beginning of the initiative (refer to Exhibit 2). ACDI representatives worked with farm managers to assemble these documents for delivery to the State Committee for Privatization (GKI) as the first step toward privatization. Assembling these documents proved to be the most time-consuming aspect of the initiative.

Once documents were assembled and analyzed, the commission developed recommendations for privatizing State-owned farms or restructuring pseudo-private farms. These recommendations appear in a memorandum from SHH (refer to Exhibit 5). Concurrently, SHH prepared a standardized Charter of a Production Cooperative for State and pseudo-private farms to fill out and for farm members to approve. This charter document was written in a simple fill-in-the-blank format to expedite the approval process on the individual farms. An English copy of this formation document appears in Exhibit 6.

Once the Charter and other Foundation Documents were completed, the following list of documents was required for registration as a Production Cooperative:

1. Formation Charter (six copies in Russian and Kazak languages with notarized signature of cooperative's board chairman;

2. Founders Agreement (six copies in Russian and Kazak languages with notarized signatures of cooperative members);

3. Protocol of Founders Meeting (Russian and Kazak language versions signed by the cooperative board chairman and secretary);

4. Address verification from local Chilik administration.

These documents were then filed with:

- Almaty Oblast Justice Department;

- Oblast Statistical Committee;

- Raion Tax Inspectorate and Pension Fund.

### Six Farms Selected for Immediate Privatization:

While the Koch Dairy Modernization Project requires five dairy farms for implementation, the Chilik Raion has a total of eleven dairy farms. The privatization effort initially targeted all eleven farms, from which five were eventually selected for immediate participation in the Koch project, with a sixth farm chosen as an alternate.

These six farms were selected based upon a number of criteria, one of which was how expeditiously a farm progressed with the privatization process.

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The six farms selected for immediate restructuring and/or privatization along with their legal status at the outset of the ACDI initiative are listed below (refer to Exhibit 7 for general information on these six farms):

Silk Way: State-owned;

Kazakstan: State-owned;

Bartogai: State-owned;

Avangarde: Private  
(Association of small private enterprises);

Koram: Private (Association of peasant farms);

Aschisai/alternate farm:  
Private (Association of peasant farms).

The Koch dairy project envisages modernizing the first five farms. This modernization will comprise \$2.2 million invested in these farms and in construction and initial inventory for a farm services center. The remaining farm, Aschisai, will serve as a substitute farm should one of the original five elect not to participate.

A farm had to have its completed privatization documents ready for submission to GKI in Almaty no later than 10 November. This performance deadline was set in coordination with the financing agencies that needed to approve project financing early enough to permit groundbreaking no later than December 1995.

**KAZAKSTANI LEGAL  
BASIS FOR FARM  
PRIVATIZATION**



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## KAZAKSTANI LEGAL BASIS FOR FARM PRIVATIZATION

*The following section was prepared by the law firm Salans Hertzfeld & Heilbronn (SHH) in Almaty, Kazakstan.*

### **Selection Process for Appropriate Legal Status of Farms:**

The law firm of Salans Hertzfeld & Heilbronn (SHH) was retained by ACDI to review all law and legislation of the Republic of Kazakstan relevant to the privatization of State enterprises, not only with a view to achieving the aims of the Koch-generated business plan, but particularly to spot any possible legal impediment to the Koch plan's implementation.

SHH found that the body of law on privatization, and particularly on privatization of agricultural enterprises, was surprisingly flexible and would allow implementation of the Koch plan without any changes or amendments. Further, SHH concluded that much of the legal structuring problems experienced in privatization thus far stemmed not from prohibitions in the law but from a lack of imagination from those working with the law. All relevant Kazakstani legal materials collected and reviewed by ACDI and SHH are listed in Exhibit 3.

To privatize the State farms involved in the ACDI initiative and make them viable economic units, three specific areas had to be addressed:

1. The structure of the new private farms;
2. The means of transfer of the assets of the State farm to the new private farms;
3. The legal structure necessary for the new private farms to attract credit and investment.

Generally, privatization of State-owned agricultural enterprises may be accomplished either by transforming the enterprise into a private entity, which can take many forms depending on the kind and size of the enterprise to be privatized (reference Edict of the President of the Republic of Kazakstan "On Additional Measures with Regard to the Privatization of the Property of State Agricultural, Storage, Processing and Service Enterprises of the Agro-Industrial Complex," 5 March 1993), or through sale of State property through auctions or tenders.

After reviewing the possible legal structures, SHH recommended and the ACDI privatization commission accepted that the new dairy farms be structured as private Production Cooperatives. This legal form is specifically provided for in the privatization of agricultural enterprises by the Presidential Edict of 5 March 1993 cited above, as well as the Rules on Privatization of Agricultural Enterprises of the Cabinet of Ministers Decree No. 633, dated 20 July 1993, "On Measures for the Realization of

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the Edict of the President of the Republic of Kazakstan," dated 5 March 1993, No. 1135 "On the National Program for Destatization and Privatization in the Republic of Kazakstan for 1993-1995 (Stage II)."

A Production Cooperative is by definition a legal entity formed and owned by voluntary members coming together to contribute their work and their property, either money or in kind (Civil Code of the Republic of Kazakstan (General Part), 27 December 1994, Article 96). The members of a Cooperative are both owners of an interest in the Cooperative and work at or for the Cooperative. In addition to a share in the profits, a Production Cooperative gives the members a wage plus an active part in the day-to-day work and, therefore, the success in the Cooperative.

The Production Cooperative has several advantages over the other available legal forms. For example, the number of participants in a limited liability partnership may not be more than thirty, for a closed joint stock company the limit is fifty. Most of the farms involved in this project will have anywhere from 100 to 1,000 members.

Further, as a Cooperative requires that its members work at the enterprise, any person who does not work (unless he or she comes within a designated exception such as illness, pregnancy or subsequent retirement) may be excluded from the Cooperative. The work requirement is

important for several regards:

1. It avoids the problem of passive investors (as permitted by limited liability partnerships and joint stock companies, whether closed or open, who contribute capital and so are entitled to a share of profit, but who do not participate in the actual running of the farm);

2. More seriously, the lack of a work requirement makes it extremely difficult to exclude a participant when such participant moves away but does not sell out his share. If a sufficient number of participants are not available to form a quorum for general assembly meetings, the enterprise can effectively become immobilized;

3. In addition to a share of the profits, the Production Cooperative gives members an active part in the day-to-day operation of the business, as well as maximum opportunity for member management and participation, thus promoting greater internal democracy and self sufficiency.

In the model developed for this ACDI initiative, in addition to a profit share based on the value of a member's contribution to the capital fund of the Cooperative, members are also provided with a wage based on normal indicia such as hours worked, job description and quality of performance.

SHH prepared a detailed list of documents required from each farm participating in the

project (refer to Exhibit 2) and reviewed the documents received to insure that there were no internal rules or other non-legislative impediments to the privatization plan. SHH prepared recommendations for each farm participating in the project describing the exact steps to be taken to turn the farm, or certain part of it, into a private Production Cooperative. Additionally, SHH and ACDI have together drafted all necessary documentation for the transformation of the State farms into private legal entities. Samples of such documentation appear in Exhibits 5 and 6 and include a Founders Agreement, Charter and draft Minutes of the Meeting of the Founders, as well as an equitable formula for determining ownership and profit shares in the newly formed Cooperatives.

### **Production Cooperative as Basis for Securing Financing:**

After its formation as a private farm, the Production Cooperative will need to raise capital through investment and loans, and to secure such capital with property of the Cooperative. Republic of Kazakstan legislation recognizes the concept of pledges of property as a method of securing the performance of obligations. Nevertheless, because the 1991 Pledge Law lost force pursuant to the entry into effect decree of the Civil Code (General part), the entire body of Kazakstan legislation on

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pledges consists of certain very skeletal provisions set forth in the Civil Code, Articles 299-328. The Civil Code articles envisage a system of registration for all pledges of both real and personal property. However, at this time a registration mechanism exists only with respect to the registration of pledges on real property and on monetary resources held in authorized bank accounts or by notaries.

The Koch dairy plan envisages taking only personal property, including livestock, as collateral at the present time. As there is currently no registration procedure for pledges on personal property, a return to those methods used in Western legal systems to register security interests prior to the establishment of our own registration system is called for. This can encompass such methods as "boiler plating," still used for notification of liens against aircraft engines today, where a metal plaque is affixed to the pledged property notifying potential creditors that such property is already pledged, and the branding of livestock taken as collateral with a similar notification.

Although the Koch plan does not as yet use farm land as part of its collateral loan package, it is important to note that under Kazakstani law agricultural land may be pledged as collateral by legal entities (Edict of the President No. 1639, "On Further Improvement of Landholding Relations" 5 April 1994, as amended). A copy of the Edict

(in English) appears in Exhibit 4.

Rights to use land can currently be purchased, transferred and inherited by individuals, and leased by legal entities. The new Constitution for the Republic of Kazakstan of 6 September 1995 now envisions the full private ownership of land [Article 6(3)], something which was impossible under the prior Constitution of 28 January 1993.

### **Amendments to Existing Law:**

The original Koch Dairy Modernization Project proposed the formation and insertion of an intermediary institution between the Kazak Dairy Entity (KDE) and the private dairy farms to be an association of the dairy farms which would contract directly and exclusively with the KDE. Current Kazakstan tax law caused this approach to be abandoned. To have the power to contract, this association would have had to be a legal entity. If it were constituted as a legal entity, it would be taxed separately and additionally to the farms themselves and the KDE.

The commission members therefore recommend a change in the law to allow pass-through tax status for association members which would provide Cooperative members the option of forming business associations without being penalized through taxation.

The only regulations that existed until mid-October 1995 with regard to the structure of a Production Cooperative were Articles 96-101 of the Civil Code (General Part) of the Republic of Kazakstan which became effective on 1 March 1995. A drafting committee under the Cabinet of Ministers was in the process of drafting a specific law "On Production Cooperatives" during the life of the ACDI Privatization Project. SHH was able to obtain a copy of the draft of the law, review it and make recommendations for changes.

The President Edict having the force of law "On Production Cooperatives" was issued on 5 October 1995 and first published on 12 October. While the drafting committee did not adopt all suggested changes, certain ones, such as the elimination of a confusion on the applicability of certain provisions of the labor law to members of the Cooperative, were incorporated into the final version of the law.



# PROJECT IMPACT

## ACDI PRIVATIZATION PLAN FOR DAIRY FARMS

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### PROJECT IMPACT

As of 10 November 1995, two of the five farms selected to participate in the Koch Dairy Modernization Project were successfully privatized as Production Cooperatives in accordance with recommendations developed by the ACDI privatization commission. The remaining three farms were in various stages of document submission with final notification of their new privatization status expected by 30 November.

Combining the ACDI initiative with the Koch dairy project has successfully resulted in a coherent working example of constructive business activity based upon the democratic principles of fairness and accountability. This is in direct contrast to past privatization efforts in the region that have engendered fragmented discrete activities incapable of achieving sustainable economic, legal or political impact.

The USAID-FSRP subgrant for this ACDI initiative has fostered the desired foundation and template for country-wide agricultural sector privatization originally mandated by Almaty Oblast Governor Uzbekov in May 1995. The methodology, recommendations and documents contained in this report provide the necessary tools for implementing future agriculture-related privatization efforts in Kazakstan.

### Increased Foreign Investment and Exports:

This ACDI privatization initiative has had an immediate and significant positive influence on the restructuring and modernization of one segment of the Kazakstani agricultural sector. The Koch dairy project alone, whose implementation is dependent upon successfully privatizing the participating dairy farms in the Chilik Raion, represents \$10.0 million in foreign investment and \$8.0 million in US exports of equipment and technology. With this market-oriented model of privatization in place and functioning, the farms in this region can expect to attract additional investment and credits as they gain experience with managing the Production Cooperative structure they adopted as part of the ACDI initiative.

### Kazakstani Legal Reform:

Based upon its direct experience in preparing ACDI recommendations for privatizing farms involved in the Koch dairy project, the law firm Salans Hertzfeld & Heilbronn (SHH) in Almaty recently advised the Kazakstani Cabinet of Ministers as to modifications to a law the Ministers were drafting on Production Cooperatives. Specifically, SHH suggested eliminating a requirement for unanimous voting when reorganizing a Production Cooperative and eliminating a confusion between Cooperative member and Production Cooperative

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itself. These modifications were accepted by the Cabinet of Ministers and will become law by the end of 1995. Since the new law will apply to Production Cooperatives in all economic sectors, this contribution to the development of Kazakstan's civil code will have a positive effect on business development over the long term.

Additionally, the ACDI commission intends to make further recommendations to appropriate Kazakstani government entities regarding a change in existing law to allow pass-through tax status for members of business associations. Under current law, an association of this type is a taxable entity. Therefore, if Production Cooperative members were to choose to form an association of similar Cooperatives, they would be subject to double taxation: First as cooperative members and second as members of the association.

In terms of the Koch dairy project, allowing this pass-through tax status for association members would permit the individual dairy farms structured as Production Cooperatives to form a single association of dairy farms which could then enter into a single contract with the Kazak Legal Entity (KDE) for raw milk sales, thus adding leverage to an individual farm's negotiating position.

### Privatization Follow-up Evaluation Criteria:

Six to twelve months after implementing the privatization recommendations, ACDI intends to conduct a follow-up evaluation of the dairy farms in the Chilik Raion to determine the effectiveness of the Production Cooperative structure as a business entity. This evaluation will require additional subgrant funding and resources. The commission has developed the following evaluation criteria for use on these farms, as well as for use on other business entities employing the Production Cooperative model:

1. Functioning board of directors in place at each farm;
2. Demonstrated mechanism for proper democratic election of board members;
3. Properly functioning separation of farm management and governing board of directors;
4. Farm members voting on appropriate issues;
5. Transparent accounting system in place and available for outside review.

### Keys to Success for Future Privatization Efforts:

The success of this ACDI initiative was due to its adherence to certain performance criteria for the duration of the project. Since

the privatization recommendations prepared by the ACDI commission are designed to be used as a template for privatization efforts in agriculture throughout the developing world, the success of these efforts will depend upon recognizing and addressing the following critical factors:

1. Linkage to definitive business plan or requisite investment fund should drive the privatization effort;
2. New business entities formed through privatization must function as private business enterprises and not be merely quasi State-run enterprises masquerading as private entities;
3. Proceed as a grassroots program where rank and file employees are educated as to the options available, as well as to the advantages and disadvantages of available business structures;
4. Regular and consistent monitoring of the process with specific time horizons set for accomplishing project tasks;
5. Direct involvement with legal document preparation expedites the process and insures minimal deviation from project objectives;
6. Translation of relevant documents and educational materials into language(s) of target region. In the case of the ACDI initiative, resource materials were translated into both Russian and Kazak to

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accommodate language preferences in urban and rural areas.

The following exhibits document the mechanisms and strategies successfully employed in the ACDI Farm Privatization Initiative in the Republic of Kazakstan. These mechanisms and strategies are, for the most part, generic in nature and are appropriate for developing similar privatization initiatives throughout the CIS and developing world.

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**EXHIBIT 1**  
**PRIVATIZATION**  
**COMMISSION MEMBERS**



## **EXHIBIT 1**

### **PRIVATIZATION COMMISSION MEMBERS**

**I. Representing USAID/ACDI:**

Mr. Gerald D. Bahensky, Director ACDI-Almaty, Kazakstan  
Mr. Samidullah Zhumakov, Consultant to ACDI-Almaty, Kazakstan  
Ms. Farida Mikhailova, Local Attorney/Consultant to ACDI-Almaty, Kazakstan  
Mr. Rod Beason, Koch Supplies Inc., Kansas City, Missouri, USA  
Mr. Tom Bates, Koch Supplies Inc., Kansas City, Missouri, USA  
Ms. Karen Widess, Salans Hertzfeld & Heilbronn, Attorneys (SHH), Almaty, Kazakstan  
Mr. Askar Moukhitdinov, Salans Hertzfeld & Heilbronn, Attorneys (SHH), Almaty Kazakstan  
Ms. Aigoul Kenjebayeva, Salans Hertzfeld & Heilbronn, Attorneys (SHH), Almaty, Kazakstan

**II. Representing Kazakstani Government:**

Mr. Umarzak Uzbekov, Governor, Almaty Oblast  
Mr. Serik Umbetov, Deputy Governor, Almaty Oblast  
Mr. Eleusiz Sultangaziyev, Governor, Chilik Raion  
Mr. Arshiddin Abakov, Head Chilik Raion Land Committee  
Mr. Bolat-bi Kutpanov, First Deputy Chief Almaty Oblast Agricultural Committee  
Mr. Murat Batyrbayev, Deputy Chief Oblast Land Committee (GKI)  
Mr. Baurshan Mukhadiyev, TERCOM Representative for Chilik Raion  
Mr. Rustem Mansurov, Chief Accountant Chilik Raion Agricultural Committee

**EXHIBIT 2**  
**FARM PRIVATIZATION**  
**DUE DILIGENCE LIST**



## **EXHIBIT 2**

### **FARM PRIVATIZATION DUE DILIGENCE LIST**

Prepared by Salans Hertzfeld & Heilbronn, Almaty, Republic of Kazakstan

#### **Legal Due Diligence:**

- 1 Corporate Matters:
  - 1.1 History of State/Collective Farm, including:
    - 1.1.1 Former phases and affiliations as a State Enterprise (for example, part of larger agricultural or agro-industrial amalgamations or associations) and whether such affiliations may continue,
    - 1.1.2 Listing of prior and current offices, facilities, unincorporated divisions and branches,
    - 1.1.3 Review of steps taken to corporatize and privatize the State/Collective Farm, and compliance thereof with applicable privatization rules, as well as all documentation related to the de-nationalization or privatization of the State/Collective Farm, including privatization plans and protocols; appraisals of the value of property; GKI and Ministry of Agriculture directives or similar documents; and documents reflecting the results of tenders and auctions.
  - 1.2 All charters of State/Collective Farm, with amendments, including any proposed post-privatization charter.
  - 1.3 Shareholder and founders' agreement of State/Collective Farm (if any), with amendments.
  - 1.4 Evidence of corporate, tax, statistics, securities and other registrations of State/Collective Farm.
  - 1.5 Copies of minutes, decisions and resolutions of State/Collective Farm, shareholders and/or management meetings.
  - 1.6 List of outstanding powers of attorney and authorizations relating to State/Collective Farm since 1992.
  - 1.7 Review of shareholder rights, including: a) any rights the State Property Committee may have to a so-called Golden Share, entitling it to veto certain of the State/Collective Farm's management decisions post-privatization; b) preferred shareholders; c) shares for workers collective, set aside at 10%, especially whether the workers will own shares collectively or individually, whether future workers have any rights to shares, and whether workers' shares can be transferred; and d) other options or rights to any shares in the State/Collective Farm.
  - 1.8 Current and ongoing government relations or control.
- 2 Administrative/Regulatory Control:
  - 2.1 Review of all operating permits and licenses.

## **EXHIBIT 2 (CONTINUED)**

- 2.2 Review of compliance with safety, sanitary and environmental rules, and review of any environmental audits.
- 2.3 Review of compliance with applicable anti-monopoly rules.
- 2.4 Review of any production or sales licenses/quotas, including quotas for sales to State enterprises or to governmental bodies.
- 3 Property:
  - 3.1 Real (immovable property):
    - 3.1.1 Descriptions and copies of all land use allocations, leases and subleases of land and land surveys, and documents concerning any buy-out of land;
    - 3.1.2 Review of permits, consents, approvals, restrictions, easements, rights of way and compliance therewith;
    - 3.1.3 List of all buildings or other structures owned, managed or leased by State/Collective Farm, and any architectural drawings documents;
    - 3.1.4 Review of existing zoning or other use restrictions.
  - 3.2 Tangible personal (movable) property:
    - 3.2.1 List of machinery, equipment, livestock and other tangible property (excluding items with a value less than 1500 Tenge) owned, managed or leased by State/Collective Farm, with copies of all documents evidencing or relating to use, possession or disposition rights (clear title);
    - 3.2.2 List of pledges, mortgages, claims or liens of any type against any property owned, managed or used by the State/Collective Farm.
  - 3.3 Intellectual property: List of all patents, trademarks, trade names, copyrights, trade secrets, technology and other intellectual property rights, owned or used by State/Collective Farm.
- 4 Labor Matters:
  - 4.1 List of all employees, consultants and independent contractors, with breakdown by department and position; payroll data for State/Collective Farm over the past twelve-month period.
  - 4.2 Review of all employment and other work agreement of State/Collective Farm, including any informal work arrangements.
  - 4.3 Review of all collective labor agreements binding on State/Collective Farm.
  - 4.4 Compliance with labor rules.

**EXHIBIT 2 (CONTINUED)**

- 5 Contractual and Other Third Party Relations:
  - 5.1 Names of major customers for dairy products, including raw milk, and copies of all agreements and correspondence with same.
  - 5.2 Copies of all protocols, letters of intent, contracts, agreements and other documents regarding the establishment of joint ventures, partnerships and other joint business activity or cooperation, if any, by State/Collective Farm.
  - 5.3 List and details of all accounts payable.
- 6 Financial and Tax Matters:
  - 6.1 Annual financial reports and balance sheets of State/Collective Farm for the last three fiscal years.
  - 6.2 Reports by auditors or accountants to State/Collective Farm.
  - 6.3 Annual tax returns, in all jurisdictions, for the last three fiscal years.
  - 6.4 List of all financial investments with documents evidencing ownership.
- 7 Bank and Credit Arrangements:
  - 7.1 Copies of agreements, contracts, guarantees or other documents relating to the provision of financing to or from (or guarantees by or to) State/Collective Farm.
- 8 Litigation and Claims:
  - 8.1 List of known pending or threatened litigation, claim or arbitration (arbitrazh) relating to State/Collective Farm, including governmental proceedings.
  - 8.2 List and description of judgment, decree or order to which State/Collective Farm is subject of, has been subject of during the past fiscal three years, excluding those already paid, and those in an amount not exceeding \_\_\_\_ Tenge.

**EXHIBIT 3**  
**PRIVATIZATION LAW**  
**CITATIONS FROM LAWS**  
**OF KAZAKSTAN NOW IN FORCE**



## **ACDI PRIVATIZATION PLAN FOR DAIRY FARMS**

**19 JUNE THROUGH 15 NOVEMBER 1995**

**KOCH DAIRY MODERNIZATION PROJECT, CHILIK RAION, ALMATY OBLAST, REPUBLIC OF KAZAKSTAN**

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### **EXHIBIT 3**

#### **PRIVATIZATION LAW CITATIONS FROM LAWS OF KAZAKSTAN NOW IN FORCE**

Prepared by Salans Hertzfeld & Heilbronn, Almaty, Republic of Kazakstan

1. Law of the Kazak SSR "On Denationalization and Privatization" (including amendments to 12 April 1993) 22 June 1991;
2. Regulations of the State Property Committee of the Republic of Kazakstan "On the Transformation of State Enterprise and Organizations into State Joint-Stock Companies;"
3. Law of the Republic of Kazakstan "On Special Characteristics of the Privatization of State Agricultural Enterprises," 14 January 1992;
4. Edict of the Present of the Republic of Kazakstan "On Urgent Measures for the Privatization of Property of State Agricultural, Storage, Processing and Servicing Enterprises of the Agro-Industrial Complex" (amended 23 September 1993), 8 February 1992;
5. Edict of the President of the Republic of Kazakstan Nr. 115 "On the National Program of Destatization and Privatization in the Republic of Kazakstan for the Years 1993-1995" (Stage II) approving program (amended 12 May 1995), 5 March 1993;
6. Edict of the President of the Republic of Kazakstan "On Privatization in the Agricultural Sector," 5 March 1993;
7. Edict of the Present of the Republic of Kazakstan "On Additional Measures with Regard to the Privatization of the Property of State Agricultural Storage, Processing and Service Enterprises of the Agro-Industrial Complex," 5 March 1993;
8. Decree of Cabinet of Ministers of the Republic of Kazakstan "On Measures for Realization of the Edict of the President of the Republic of Kazakstan" dated 5 March 1993, Nr. 1135, "On National Program for Destatization and Privatization in the Republic of Kazakstan for 1993-1995 (eleven-stage)," with annexes, 20 July 1993, Nr. 633;
9. Regulations of the Council of Ministers of the Republic of Kazakstan "On the Participation of Foreign Investors in the Process of Privatization of State Property in the Republic of Kazakstan," approved by Degree Nr. 633 of the Council of Ministers 20 July 1993 (amended 10 January 1994 and 5 December 1994, further amended 25 January 1995);
10. Edict Nr. 1350 of the President of the Republic of Kazakstan "On the Loss of Force of and on the Introduction of Changes to Certain Decisions of the President of the Republic of Kazakstan Regarding Destatization and Privatization," 23 September 1993;
11. Law of the Republic of Kazakstan "Concerning Amendments and Changes into Law of the Republic of Kazakstan," "On Particularities of Privatization of State Agro-Industrial Enterprises," 21 October 1993;

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### EXHIBIT 3 (CONTINUED)

12. Degree Nr. 216 of the Government of the Republic of Kazakstan approving Temporary Regulations "On the Sale of State Agricultural Enterprises to (the Private Ownership of) Citizens," 24 February 1994;
13. Law of the Kazak SSR "On Agriculture" (amended 8 April 1993), 21 May 1990;
14. Law of the Kazak SSR "On the Priority of Developing and Aul. Village and Agro-Industrial Complex in Kazak SSR," 13 February 1991;
15. Law of the Republic of Kazakstan "On Enacting Changes and Additions to the Land Code of the Republic of Kazakstan and Law of the Republic of Kazakstan" "On Agriculture," and Decree "On Entry into Force," 8 April 1993;
16. Civil code of the Republic of Kazakstan, 27 December 1994;
17. Edict of the President of the Republic of Kazakstan with the force of law "On Economic Partnership," 2 May 1995.

These legislative materials give a general idea of the forms of privatization, privileges for the labor collective and types of legal entities for privatizing enterprises. Through our research for the project, we concluded that the formation of a Production Cooperative would be most appropriate for the project (refer to previous memorandum). The most relevant laws are as follows:

- Civil Code of the Republic of Kazakstan: Envisages a Production Cooperative as a form of agricultural enterprise, Articles 96 through 101 (discussed in a previous memorandum).
- Edict of the President of the Republic of Kazakstan "On Additional Measures with Regard to the Privatization of the Property of State Agricultural Storage, Processing and Service Enterprises of the Agro-Industrial Complex," 5 March 1993: Describes the forms of privatization and types of payments by participants for their shares (pai, dolya). The privatization must be carried out by the initiative of the working members of the enterprise (Article 2); workers and pensioners may use their "house coupons" (zhilishnye cupony) as payment (Article 2.2). Owners of the shares (paeyv, dolei) may organize a Production Cooperative on the basis of structural divisions of an enterprise (Article 2.3). The enterprises that earlier were privatized into collective property should be reorganized into economic partnerships or joint stock companies pursuant to the National Program on Destatization and Privatization in the Republic of Kazakstan for 1993-1995 (Stage II).
- Annex 3: "The Order of Destatization and Privatization of the Enterprises of the Agro-Industrial Complex" to the Decree of Cabinet of Ministers of the Republic of Kazakstan "On Measures for Realization of the Edict of the President of the Republic of Kazakstan dated 5 March 1993, Nr. 1135," "On National Program for Destatization and Privatization in the Republic of Kazakstan for 1993-1995 (Stage II), with annexes, 20 July 1993, Nr. 633."

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**EXHIBIT 3 (CONTINUED)**

Part II to Annex 3: "The Owners of *imushestvegogo paya* (property share) after payment of a first installment of 10% of the price of redeemed assets should receive a certificate of ownership. Simultaneously, the owner shall incur an obligation for payments over a certain period for the assets but no longer than ten years" (Article 1). The owners of the shares (*paya, doli*) have the right to establish an agricultural cooperative (Article 2).

Part III to Annex 3: "Settlement between Seller and Buyer shall be made in the currency of payment of the Republic of Kazakstan and housing coupons (*zhilishnye cupony*)" (Article 4).

Part IV to Annex 3: "The enterprises of the agricultural complex that were earlier transferred into collective ownership shall be reorganized into small enterprises, Production Cooperatives, farm enterprises and their associations, economic partnerships or joint stock companies pursuant to the National Program for Destatization and Privatization for 1993-1995 (Stage II) in case of non-compliance during reorganization current legislation, namely:

- Independent reorganization of State enterprises into small enterprises, association of enterprises, etc.;
- Non-provision or improper provision of their share (*dolaya*) in the privatizing assets of an enterprise to each worker or pensioner;
- Non-maintenance or non-breach of existing technological connections that lead to decrease of productivity;
- Worsening of the functional activity of the industrial infrastructural objects' activity;
- Non-fulfillment or improper fulfillment by Buyer of the sales-buy agreement, concluded with seller that lead to change of activity profile and size of productivity, embezzle of assets and its non-purpose use and for non-fulfillment other provisions that envisages in the agreement."

**EXHIBIT 4**  
**PRESIDENTIAL DECREE**  
**ALLOWING COLLATERALIZATION**  
**OF AGRICULTURAL LAND**  
**IN KAZAKSTAN**



## **EXHIBIT 4**

### **PRESIDENTIAL DECREE ALLOWING COLLATERALIZATION OF AGRICULTURAL LAND IN KAZAKSTAN**

**Decree of the President of Republic of Kazakstan**

**"On further on improvement of land relations"  
#1639 5 April 1994**

**Article 2:** Legal entities (except State agricultural enterprises) which have been provided land under lease agreement can sell, sublease and/or collateralize the right to use or the right to lease the land to citizens and other legal entities.

Citizens and legal entities can transfer accordingly the inheritance possession right, the right to use or the right to lease the land as a contribution to the establishment funds of joint-stock companies, limited partnerships, cooperatives including entities with foreign participation.

**Article 4:** Assign State Committee of the Republic of Kazakstan on land relations and land management to determine cost of the inheritance possession right, the right to use and the right to lease.

**EXHIBIT 5**  
**RECOMMENDED STEPS**  
**FOR PRIVATIZING DAIRY AND**  
**FEED-CROP UNITS AT STATE FARMS**



## **EXHIBIT 5**

### **RECOMMENDED STEPS FOR PRIVATIZING DAIRY AND FEED-CROP UNITS AT STATE FARMS**

Prepared by Salans Hertzfeld & Heilbronn, Almaty, Republic of Kazakstan

#### **What is a Production Cooperative?:**

A Production Cooperative is a legal entity that is formed and owned by voluntary members who come together to contribute their work and their property (either money or in-kind). The members of a cooperative are both owners of an interest in the cooperative and work at or for the cooperative. This is different from other types of legal entities (i.e., joint-stock companies, partnerships) whose members are only owners of interests in the legal entities, but others (usually paid employees) do most of the work. In addition to a share of the profits, a Production Cooperative gives the members a wage plus an active part in the day-to-day working and, therefore, the success of the cooperative.

#### **Steps to be Taken:**

1. Choice between two structures for privatization: Either sever the dairy and feed-crop units from the SovKhoz and privatize them as a separate farm or privatize the entire SovKhoz as one private Production Cooperative.

The choice will depend on the amount of property of the SovKhoz that the dairy and feed-crop units use. For example, if the dairy and feed-crop units together use more than 60% of the property and land of the SovKhoz, then the entire SovKhoz can be privatized as one Production Cooperative. If the dairy and feed-crop units together use less than 40% of all the property and land of the SovKhoz, then they can be severed and privatized separately. If the proportion is between 40% and 60%, then the kinds of property and activities will have to be closely looked at and taken into account when deciding which structure to use.

2. Make a list of individuals eligible to become members of the new Production Cooperative (cooperative). Persons eligible for membership should be adults and they should be currently working at a dairy unit or feed-crop unit, or those who normally work at such units but are not now working due to sickness or maternity leave, plus those pensioners who retired not more than three years ago immediately after working at a dairy unit or feed-crop unit who wish to return to work for the new Production Cooperative. The question of whether to allow pensioners to return to work as members of the cooperative is purely within the discretion of the founding members.

3. Make one list of individuals eligible to receive property from SovKhoz upon privatization.

Make another list of individuals eligible to receive rights to parcels of land from SovKhoz upon privatization.

4. Make a list of each item of property belonging to the SovKhoz and calculate the value of each item (here, property means all property items except for land use rights, including movable and immovable property). The calculation of value of property should be made according to the method set out by the State Property Committee (GKI). A copy of this method is attached.

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**EXHIBIT 5 (CONTINUED)**

5. Calculation of total debt of State farm, broken down into each unit. For each debt, write a short description of the terms of the debt, i.e., how much is owed, to whom, at what interest rate and how and when it is to be repaid.
6. Negotiation and conclusion of any debt forgiveness possible.
7. Separate and designate property to relevant units, designation to dairy unit and feed-drop unit to be made first pursuant to list provided.
8. Set up separate accounting books for each unit.

After privatization, set up separate bank accounts for each separate legal entity or separate bank subaccounts for each unit of a SovKhoz that is privatized in its entirety.

9. Distribute property and land rights to eligible individuals according to the method set out by GKI. The method set out by GKI is attached.
  - a. If the dairy and feed-crop units are going to be severed and privatized separately, refer to notes on property valuation and distribution below.
10. Legal formation of Production Cooperative:
  - a. Founders meeting;
  - b. Signature of documents (refer to model documents attached);
  - c. Registration of cooperative as legal entity;
  - d. Capital contribution by members, each eligible person wishing to become a member of the cooperative contributes some or all of his or her property and land rights to the authorized fund of the cooperative.

Membership is open only to adults who will work at/for the cooperative (with certain exceptions as set out above). After property distribution from the SovKhoz, some families may have persons who will not be eligible or will not want to become a member of the cooperative, i.e., children, spouses who did not work at the dairy or feed-crop units, spouses who have decided not to work anymore or who do not want to work as farmers. Such person may give his or her property to a family member who will become a member of the cooperative for contribution to the authorized fund of the cooperative, in which case the contributing family member will have a larger share of ownership and of profit distribution in the cooperative (proportionate to the contribution).

11. Cooperative transfer any unnecessary property to State farm to pay off or pay down debit, if any (refer to model documents attached).

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**EXHIBIT 5 (CONTINUED)**

12. Conclusion of any contracts necessary between cooperative and State farm to pay off any remaining debt (long-term, low or no interest rate payments, either in monetary form or in-kind) (refer to model documents attached).

***If the dairy and feed-crop units are going to be severed from the SovKhoz and privatized separately, please follow the recommendations below concerning property valuation and distribution.***

**Property:**

Property as used here includes everything except rights in land, all movable property (livestock, vehicles, equipment) and immovable property (buildings).

After items of property have been valued (refer to Point Nr. 4 above) and it is determined what Tenge value amount is to be distributed to each person and who those persons are then the SovKhoz should assign property ownership, expressed as Tenge value, to individuals in particular pieces of property relevant to each person's unit. For example, if each eligible person at the SovKhoz is entitled to 1,000 Tenge worth of property, then that person should either receive a single piece of property worth 1,000 Tenge relevant to his or her unit or 1,000 Tenge of value in a single piece of equipment, building, animals or other asset, together with other unit member(s). If a cow is worth 1,000 Tenge and a tractor is worth 12,000 Tenge, then the individual designated as a member of the dairy unit will receive either one cow or, together with eleven other individuals designated to the dairy unit, 1,000 Tenge worth of ownership in a particular tractor.

**Land:** The State farm will distribute specific parcels of non-residential land to each eligible individual. The parcels should be distributed to the members of the dairy unit and feed-crop unit so that they are as contiguous as possible.

**EXHIBIT 6**  
**STANDARDIZED CHARTER**  
**FORMATION DOCUMENT FOR**  
**AGRICULTURAL PRODUCTION**  
**COOPERATIVES DEVELOPED BY ACDI**  
**PRIVATIZATION COMMISSION 1995**



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**EXHIBIT 6**

**STANDARDIZED CHARTER FORMATION DOCUMENT  
FOR PRODUCTION COOPERATIVES  
DEVELOPED BY ACDI PRIVATIZATION COMMISSION 1995**  
Prepared by Salans Hertzfeld & Heilbronn, Almaty, Republic of Kazakstan

(Refer to following pages)

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**CHARTER**  
**FOR**  
**A PRODUCTION COOPERATIVE**  
**TO BE ESTABLISHED**  
**BETWEEN**  
**MEMBERS OF THE DAIRY UNIT**  
**AND THE FEED GROWING UNIT**  
**OF**  
**STATE FARM " \_\_\_\_\_ "**

\_\_\_\_\_ 1995

SA

**CHARTER**  
**OF THE PRODUCTION COOPERATIVE**

" \_\_\_\_\_ "

**ADOPTED BY THE MEETING OF THE**  
**FOUNDING MEMBERS ON**  
\_\_\_\_\_, 1995

**REGISTERED WITH THE**

\_\_\_\_\_

\_\_\_\_\_

**CHARTER**  
**PRODUCTION COOPERATIVE**  
" \_\_\_\_\_ "

**ARTICLE 1. \_\_\_\_\_ FORM, FORMATION AND FOUNDERS**

- 1.1 A production cooperative (the "Cooperative") is formed in the Republic of Kazakhstan ("RK") by the Founding Members listed in Annex 1 hereof (hereinafter collectively and individually referred to as the "Founding Member(s)").
- 1.2 The Cooperative is governed by the terms and conditions of the present Charter ("Charter"); the General Part of the RK Civil Code, dated 27 December 1994; and other mandatory RK legislation, governmental instructions and regulations applicable thereto.

**ARTICLE 2. \_\_\_\_\_ NAME, LEGAL ADDRESS AND DURATION OF  
\_\_\_\_\_ THE COOPERATIVE**

- 2.1 The Cooperative name as well as the registered trade name of the Cooperative is:
- \_\_\_\_\_ ( in Kazakh); and  
\_\_\_\_\_ (in Russian).
- 2.2 The legal address of the Cooperative is:
- 2.3 The duration of the Cooperative shall be unlimited unless liquidated, dissolved and terminated pursuant to the present Charter.

**ARTICLE 3. PURPOSES AND ACTIVITIES OF THE COOPERATIVE**

**3.1 The basic purposes of the Cooperative shall be:**

**3.1.1 to operate a dairy farm for the production of raw milk as well as other milk products, to market and sell within the RK the production and products of the dairy farm, as well as other products authorized by the Directorate of the Cooperative;**

**3.1.2 to breed, acquire and raise livestock;**

**3.1.3 to cultivate and process feed grains for livestock, as well as related products;**

**3.1.4 to engage in any and all other lawful activities in which companies may be engaged, as the Supervisory Board may from time-to-time determine.**

**3.2 The Cooperative may engage in the following activities in order to carry out the basic purposes set forth in paragraph 3.1 above, all within the confines of applicable legislation and subject to obtaining any necessary licenses and permits:**

**3.2.1 to conclude and perform legal transactions independently in its own name with RK and foreign legal entities and natural persons and with national and international organizations of any kind;**

**3.2.2 to acquire, own, lease, rent, restore, design, construct, equip, adapt and/or sell or otherwise dispose of all kinds of property, whether movable or immovable, tangible or intangible, including without limitation land, buildings, livestock structures, feed silos and warehouses, and equipment necessary or appropriate for all of the Cooperative's activities;**

**3.2.3 to exercise the rights of ownership, possession, use, and disposition of its property in accordance with applicable legislation;**

**3.2.4 to appoint dealers to trade in the Cooperative's products;**

**3.2.5 to utilize rules of accounting and depreciation existing in the RK;**

**3.2.6 to participate in, acquire, own, lease, sell or otherwise dispose of legal entities and associations necessary or appropriate for its activities;**

**3.2.7 to participate in the management of legal entities in which it has the right of ownership or of a participation in the affairs or in the revenues thereof;**

3.2.8 to acquire foreign currency in the RK and abroad in accordance with applicable legislation;

3.2.9 to establish and operate all kinds of accounts with banks or financial institutions in the RK and abroad, as may be determined from time to time by the Directorate, subject to the necessary approvals of the appropriate RK governmental bodies or financial institutions;

3.2.10 to borrow and use loan proceeds and credits in Tenge and/or foreign currencies from banks in the RK and/or in foreign currencies from authorized RK or foreign financial institutions, the members and/or third persons, as well as to issue bonds (obligations) in a manner consistent with RK legislation;

3.2.11 to independently fix prices for its products and services in Tenge and/or foreign currencies by agreement with its clients and independently to negotiate prices and terms of supply of raw and semi-processed materials;

3.2.12 to conduct export and/or import operations relating to the purchase and sale or lease or rental of materials, goods, and/or services;

3.2.13 to correspond and communicate freely with legal entities and natural persons, as well as with foreign, state and international organizations in the RK and abroad; ;

3.2.14 to issue powers of attorney;

3.2.15 to grant or accept in any currency pledges, mortgages, guarantees, or other financial obligations, and to freely own, manage, or dispose of any assets over which a charge or pledge was created

3.2.16 to acquire, exercise or transfer all other rights, perform all obligations and bear the respective duties of a legal entity in accordance with applicable legislation;

3.2.17 to exercise the rights set out in this Article on its own account or by contracting with others to act on its behalf or in participation with any other legal entity located in the RK or abroad; and

3.2.19 to do all such other things which may be necessary or appropriate to pursue the basic purposes and business objectives set forth in Article 2 and to exercise the powers set forth in this Article 3.

**ARTICLE 4. LEGAL REGIME AND STATUS OF THE COOPERATIVE**

- 4.1 The Cooperative, as a production cooperative, is a legal entity under RK legislation. The Cooperative shall have the right, on its own behalf, to enter into contracts, to acquire proprietary and non-proprietary personal rights, to enter into and perform obligations, to sue and be sued in courts and arbitration tribunals in the RK and abroad, and to establish branches, subsidiaries and representation offices in the other sovereign states of the CIS and abroad.
- 4.2 The Cooperative shall conduct its activity in conformity with mandatory provisions of legislation applicable on RK territory, as well as the present Charter. To the extent required by legislation, the Cooperative shall inform the competent authorities responsible for registration of companies in the RK of any amendments to the present Charter within the time periods established by applicable legislation following the adoption thereof.
- 4.3 The Cooperative shall acquire the status of a legal entity upon its state registration in accordance with applicable legislation and the activity of the Cooperative shall commence as of the date of such registration.
- 4.4 The Cooperative is liable for its obligations to the extent of the property it owns. The RK is not liable for obligations of the Cooperative and the Cooperative is not liable for obligations of the RK. The Members of the Cooperative shall bear secondary liability for the obligations of the Cooperative in accordance with RK legislation. The Members of the Cooperative do not have any special rights in respect of items owned by the Cooperative, including the items transferred by them to the Cooperative as their portion of the contribution thereto.
- 4.5 The Cooperative shall be independent, autonomous and self-managed, shall operate on the basis of full cost accounting and self-financing, with the capacity to pay its own expenses, including in foreign currency, and shall maintain books of account and bank accounts in its own name.
- 4.6 The Cooperative shall have a corporate seal. A specimen of the corporate seal shall be approved by the Supervisory Board of the Cooperative.
- 4.7 The official languages of the Cooperative are Kazakh and Russian. The working languages of the Cooperative are Kazakh and Russian.

**ARTICLE 5. AUTHORIZED FUND AND FOUNDERS' CONTRIBUTIONS**

- 5.1 The initial authorized fund of the Cooperative (the "Authorized Fund") is \_\_\_\_\_ Tenge, formed by contributions from the Founding Members in accordance with Annex 1 hereto.
- 5.2 Contributions to the Authorized Fund may be made in cash, either in foreign currency or in Tenge, or in kind, in a manner consistent with applicable RK legislation.
- 5.3 The value of contributions in kind to the Authorized Fund of any previously state-owned property at the time of the founding of the Cooperative shall be determined according to the legislation of the Republic of Kazakhstan
- 5.4 The Authorized Fund may be increased or decreased pursuant to a decision by two-thirds (2/3) of all of the votes of the General Assembly (or their authorized representatives), and such Members shall have a right of first refusal to participate in any capital increase by making additional contributions to the Authorized Fund. To the extent required under RK legislation, the Authorized Fund may be decreased only after notification to all creditors of the Cooperative and observance of all other requirements.

**ARTICLE 6. MEMBERSHIP**

- 6.1 Each owner of a participatory share (*pai*) in the Cooperative shall be considered to be a member of the Cooperative ("Member"). Membership is available to all adults of working age.
- 6.2 In addition to any other rights and obligations under the foundation documents, or by law, as a condition of continuing membership, each Member shall be obligated to work at or for the Cooperative, and shall be compensated by salary according to wage and salary schedules set by the Supervisory Board.
- 6.3 Membership of a Member may be terminated, except in certain cases provided for below, by vote of the General Assembly pursuant to Article 10.7 herein, if such Member fails to work for a continuous period of 90 days or for a total of 180 days in any 12 month period.
- 6.3.1 The Membership of a Member shall not be terminated in case of a failure by the Member to work, if such failure arises from illness, retirement, maternity leave, or other valid reason in the estimation of the Supervisory Board, or pursuant to RK legislation

- 6.4 A Member whose membership is terminated by vote of the General Assembly pursuant to Article 10.7. hereof, shall be entitled to the value of the underlying participatory share, pursuant to Article 15. below. The participatory share of a Member in the Cooperative may be inherited upon death of such a Member. If an heir chooses not to become a Member, and accept all the rights and obligations of membership, then the heir shall be obliged to transfer the inherited interest in the Cooperative pursuant to Article 15., and shall be paid the value of such interest in accordance with the balance sheet of the Cooperative on the date of transfer, within sixty (60) days of transfer.

**ARTICLE 7. RIGHTS AND OBLIGATIONS OF MEMBERS**

- 7.1 Each Member of the Cooperative shall have one (1) vote for matters decided by the General Assembly.
- 7.2 Each Member of the Cooperative is entitled to a proportionate share of the distribution of the Cooperative's profits, as declared by the Supervisory Board and confirmed by the General Assembly, and to a proportionate share of the distribution of the Cooperative's assets upon liquidation, in accordance with such Member's participatory share (*pai*).
- 7.3 \_\_\_\_\_ (—%) percent of the initial Authorized Fund must be paid in upon registration of the Cooperative.
- 7.4 Failure of a Member to make full payment of his or her contribution to the Authorized Fund when due shall result in the assessment of interest at a rate determined by the Supervisory Board.
- 7.5 The Members in the Cooperative shall have the right:
- 7.5.1 to participate in the management of the affairs of the Cooperative in accordance with the Cooperative's foundation documents;
  - 7.5.2 to receive full information about the Cooperative's activity;
  - 7.5.3 to take part in the distribution of profits received by the Cooperative in the manner set out in this Charter;
  - 7.5.4 to familiarize themselves with the bookkeeping and other documentation of the Cooperative.
  - 7.5.5 to withdraw from the Cooperative in accordance with Article 15. below.

**7.6 Each Member in the Cooperative shall be obliged:**

7.6.1 to comply with the conditions reflected in the foundation documents;

7.6.2 to perform its obligations with respect to the Cooperative which are undertaken in the established manner;

7.6.3 to participate in the management of affairs of the Cooperative, except as provided by applicable RK legislation;

7.6.4 to make initial and additional contributions in the amount and in the manner provided by the foundation documents;

7.6.5 to work at or for the Cooperative in the manner set out in the foundation documents; and

7.6.5 to fulfill other obligations imposed by mandatory RK legislation.

**ARTICLE 8. THE RESERVE FUND AND OTHER FUNDS**

8.1 The Cooperative shall establish and maintain a Reserve Fund, in an amount established by the Supervisory Board. The Reserve Fund shall be used to cover losses, bad debts and for other purposes in accordance with applicable RK legislation.

8.2 The Supervisory Board shall decide on the creation of and allocations to the other funds of the Cooperative, as well as the use of the resources allocated to said funds in accordance with the purposes thereof and the interests of the Cooperative

**ARTICLE 9. ADMINISTRATION OF THE COOPERATIVE**

9.1 The Cooperative shall be administered by the General Assembly of Members (*obshcheye sobraniye chlenov*), the Supervisory Board (*nabtyudatel'nii soviet*), and the Directorate (*pravleniye*). The composition and functions of these management bodies are set forth in detail below and shall remain at all times in accordance with the principles set forth herein.

9.2 In the conduct of the Cooperative's business activities and operations, the Members, the Supervisory Board and the Directorate, shall at all times comply with all applicable legislation and regulations, as well as any internal regulations of the Cooperative

**9.3 If a member of the Supervisory Board or the Directorate has a financial interest in a transaction concluded with the Cooperative, such member must:**

**9.3.1 inform the Directorate and the Supervisory Board; and**

**9.3.2 receive written authorization for the conclusion of such transaction from the Directorate and the Supervisory Board.**

**ARTICLE 10. THE GENERAL ASSEMBLY OF MEMBERS**

- 10.1 The supreme governing body of the Cooperative shall be the General Assembly of Members (the "General Assembly"), consisting of all of the Members of the Cooperative. It shall have exclusive competence over the matters set forth in paragraphs 10.6810.8 below, which may not be delegated to other management bodies of the Cooperative. It shall also have general, non-exclusive competence to decide all questions relating to the activities of the Cooperative and to review all acts and decisions of the Supervisory Board and the Directorate.**
- 10.2 The Cooperative shall hold an annual meeting of the General Assembly on or before March 31 of each year. The annual meeting of the General Assembly shall be called by the Supervisory Board and shall be held at a location within the RK, as determined by the Supervisory Board.**
- 10.3 All meetings other than the annual meeting of the General Assembly shall be extraordinary meetings. Extraordinary meetings may be called by the Supervisory Board of the Cooperative, or by Members alone or in combination holding not less than twenty (20) percent of the Authorized Fund.**
- 10.4 Written notice of the calling of a meeting of the General Assembly must be sent to each voting Member no later than ten (10) days before the date of the meeting, by post or by hand delivery, to the address indicated in the Cooperative register. Notice of an extraordinary meeting must contain a specific list of the matters to be discussed. . Voting Members are those who have fully paid their contribution to the Authorized Fund.**
- 10.5 Subject to Article 10.4, any Member may waive notice of any meeting of the General Assembly before, during or after the meeting by submitting a written waiver to the Chairman of the meeting.**
- 10.6 A quorum shall exist, and a meeting of the General Assembly shall be deemed duly constituted, if more than fifty (50) percent of the Members (or their authorized representatives holding notarially certified proxies), participate therein.**

- 10.7 The following matters are within the exclusive competence of the General Assembly and require approval or decision of the General Assembly on the basis of two-thirds (2/3) of all of the votes of the General Assembly, in person or by notarially attested proxy:**
- 10.7.1 Changes to the present Charter;**
  - 10.7.2 Increases or decreases in the Authorized Fund (subject to Article 5 hereof); and**
  - 10.7.3 The election of members of the Supervisory Board and the Directorate of the Cooperative, as well as the designation of the statutory auditor and/or other independent auditor, and delineation of their respective responsibilities and their remuneration, and decisions concerning their dismissal prior to the expiration of their terms**
  - 10.7.4 The acceptance of new Members of the Cooperative and, solely pursuant to Article 6.3 and on other grounds provided by law, the termination of membership of a Member of the Cooperative;**
  - 10.7.5 The suspension of the economic activity of the Cooperative, its merger with another legal entity, or its material reorganization (consolidation, split-up or transformation), or the adoption of decisions in connection with the voluntary or forced liquidation of the Cooperative, as well as the appointment of a Liquidation Commission and approval of the liquidation balance; and**
  - 10.7.6 The creation and liquidation of divisions, representations, branches and subsidiary companies.**
- 10.8 In addition, the following matters shall be submitted to each annual Meeting of the General Assembly and shall be decided by a simple majority vote of the voting members represented at the meeting, in person or by notarially attested proxy.**
- 10.8.1 Approval of the Cooperative's accounts, balance sheet, and profit and loss statement and other reports submitted by the Supervisory Board or the Directorate;**
  - 10.8.2 Approval of the amount of the final dividend, subject to Article 14. \_ of the present Charter.**
- 10.9 The Chairman of the Supervisory Board shall preside as Chairman of any meeting of the General Assembly. In the event of their absence, one of the other**

**Supervisory Board members, as selected by majority vote of the Supervisory Board members present, shall preside. The Secretary of the Supervisory Board shall be the Secretary of the meeting; if the Secretary is absent, the Members shall elect one of the Supervisory Board members to serve as Secretary.**

- 10.10 If a quorum is not achieved within one half hour following the scheduled commencement of a meeting of the General Assembly, any such meeting called at the request of the Members shall be canceled. Any such meeting called by the Supervisory Board shall be postponed for the period established by the presiding Chairman, but not for more than thirty (30) days. A reconvened meeting shall be deemed duly constituted with any number of assembled Members.
- 10.11 By decision of the Members present at a meeting of the General Assembly at which a quorum is present, the meeting may be suspended for a period not exceeding thirty (30) days..
- 10.12 Matters are decided at a meeting of the General Assembly by vote of the Members (one member-one vote). Voting may be conducted orally or in writing, as determined by the President.
- 10.12.1 If conducted in writing, a vote shall be taken as follows. The Secretary of the Meeting shall circulate personalized voting ballots with an indication of: the name of the Member; and possible voting options.
- 10.12.2 If a vote is to be conducted orally, the Secretary of the Meeting shall keep detailed minutes of the measure proposed, the votes of the Members for and against and whether the measure has passed or not passed.
- 10.13 A Member (or his or her duly appointed representative) may attend and vote during a meeting only if the Member's contribution to the Authorized Fund has been fully paid.
- 10.14 A representative of a voting Member may participate in a meeting and may vote only if he or she is named in a notarially attested proxy, which must be submitted to the Chairman prior to any vote.
- 10.15 The Chairman of the Supervisory Board of the Cooperative may call for written votes on any matter without the holding of a meeting of the General Assembly, provided that written notice of such action has been given to each Member. No action or decision on the basis of a written vote shall be effective unless: i) One hundred percent (100%) of Members have unanimously agreed in favor of such action or decision and ii) all such written votes have been received by the

**Chairman of the Supervisory Board not later than sixty (60) days after the calling for such written vote.**

- 10.16 Written minutes, in Russian, shall be prepared by the Secretary of the Meeting promptly following each meeting of the General Assembly and shall be circulated to each Member. Such minutes shall be deemed the official minutes of the meeting when signed by the Chairman and the Secretary of the Meeting. The Chairman and Secretary of the Supervisory Board shall be authorized to certify copies of the minutes of any meeting of the General Assembly.

**ARTICLE 11. ELECTION, COMPOSITION AND DISMISSAL OF  
THE SUPERVISORY BOARD**

- 11.1 The Supervisory Board is the supreme governing body of the Cooperative during the interval between meetings of the General Assembly. It shall consist of five (5) voting members who shall be knowledgeable in the field of activity of the Cooperative. The five (5) members shall be nominated by the Voting Members of the Cooperative and shall be elected at an annual meeting of the General Assembly. Members of the Supervisory Board shall be Members of the Cooperative. A member of the Supervisory Board may not also serve concurrently as a member of the Directorate.
- 11.2 The Chairman of the Supervisory Board shall be elected by the Supervisory Board from among its members. Each Supervisory Board member shall serve for a term of two (2) years, which may be renewed an unlimited number of times. A member of the Supervisory Board may be dismissed by a decision approved by two-thirds (2/3) of the votes of those Members present, in person or by notarially attested proxy, at a duly convened meeting of the General Assembly before expiration of the period of his or her appointment. In case a member of the Supervisory Board is dismissed, a replacement shall be elected by special duly convened meeting of the General Assembly within sixty (60) days of the dismissal of the prior member of the Supervisory Board. The General Assembly shall fix the corresponding remuneration, if any, and expense reimbursement to be paid by the Cooperative to members of the Supervisory Board and their alternates in connection with their service.
- 11.3 Meetings of the Supervisory Board shall be held as often as necessary, but at least twice per year. Such meetings, which may be either regular or special meetings, shall be held in person at the location specified for the meeting. Any Supervisory Board resolution or action may validly be taken by written consent in lieu of a meeting if signed by all of the members of the Supervisory Board.
- 11.4 At all meetings of the Supervisory Board, the participation of three (3) members shall be required for a quorum for the transaction of business. Resolutions and

other Supervisory Board actions shall require the vote, in person or by proxy, of a majority of the members of the Supervisory Board participating in the meeting. Each member of the Supervisory Board or, in his or her absence, a representative thereof, shall have one (1) vote.

- 11.5 Supervisory Board meetings shall be regularly held on dates and at a place fixed by the Supervisory Board. The agenda, time, date or place of a regular meeting may be changed by the Chairman by written notice to the Supervisory Board members given by mail or hand delivery at least five (5) days prior to the regularly scheduled date of the meeting.
- 11.6 Special Supervisory Board meetings may be convened by the Chairman on his or her own initiative or at the request of any three (3) Supervisory Board members or the President of the Cooperative to discuss one or more specific issues. Notice of such meeting shall be given to the Supervisory Board members in the manner set forth in paragraph 11.8 of the Charter and shall include an agenda listing the matters to be discussed at the meeting.

Notice of a rescheduled or special meeting of the Supervisory Board or any irregularity in any meeting may be waived by any Supervisory Board member by written waiver, and such waiver may be validly given before, during or after the meeting to which it relates.

- 11.7 Russian and Kazakh shall be the languages of the meetings. The Supervisory Board shall designate a Secretary of the Supervisory Board, who shall be responsible for keeping the minutes of meetings of the Supervisory Board and of the General Assembly. The minutes of Supervisory Board meetings shall be in writing in Russian, and when signed by the Chairman and Secretary of the Supervisory Board shall be the official minutes of the meeting. The Chairman and Secretary of the Supervisory Board shall be authorized to certify copies of the minutes of any meeting of the Supervisory Board.
- 11.8 Any Supervisory Board member shall have the right to obtain from the Supervisory Board, the Directorate or from any persons who are members of these bodies any and all information such member may require on any and all matters in relation to the activity of the Cooperative and, if such member so wishes, to examine and verify at any time all records, files and documents of the Cooperative.
- 11.9 The Supervisory Board is competent to decide all questions relating to the activities of the Cooperative, unless within the exclusive competence of the General Assembly or otherwise specified in the Charter.

**11.10 The following matters shall be within the exclusive competence of the Supervisory Board, subject to the right of review reserved to the General Assembly, and may not be delegated to the Directorate:**

- 11.10.1 Declaration of interim profit distributions;
- 11.10.2 Declaration of final profit distributions, which may not exceed the amounts proposed by the Directorate, to be submitted for approval of the General Assembly;
- 11.10.3 Granting of credits to third persons, other than in the ordinary course of business, and the contracting of mortgages or liens on Cooperative assets;
- 11.10.4 the making of allocations to the Reserve Fund, and decisions concerning the creation of and allocations to any other funds of the Cooperative;
- 11.10.5 Adoption of accounting procedures including policies regarding depreciation and amortization, within the limits of applicable legislation;
- 11.10.6 Approval of the annual operating budget and the capital investment budget, and preliminary approval of the annual report prior to its submission to the General Assembly;
- 11.10.7 Proposals to the General Assembly regarding amendment to the nature of the business or purpose of the Cooperative, and the development of new activities;
- 11.10.8 Proposals to the General Assembly regarding the sale of all or substantially all of the assets of the Cooperative;
- 11.10.10 Investments or loans not provided for in the annual budget (other than de minimis amounts);
- 11.10.11 Determination of the types and amounts of insurance coverage necessary for the Cooperative's operations;
- 11.10.12 Approval of all activities not within the regular course of business of the Cooperative, including the execution, modification or cancellation of all contracts exceeding one (1) year;

- 11.10.13 Adoption and periodic revision of an operations schedule setting forth precise monetary limits on the authority of members of the Directorate to enter into contracts or commitments on behalf of the Cooperative;
  - 11.10.14 Entering into or amendment of a contract or commitment by the Cooperative with any third person involving an amount in excess of \_\_\_\_\_ Tenge (T\_\_\_\_\_) or its equivalent in convertible currency (at the market rate of exchange) or the conclusion or amendment of any contract between the Cooperative and one of its Members;
  - 11.10.15 Initiation of judicial or arbitration proceedings on behalf of the Cooperative.
  - 11.10.16 Recommendations to the General Assembly concerning the appointment and discharge of the members of Directorate and all matters regarding their respective conditions of employment and remuneration, as well as those of the Chief Bookkeeper.
  - 11.10.17 Determination of the working capital needs of the Cooperative for each successive year;
  - 11.10.18 Recommendations concerning the appointment of the Liquidation Commission in accordance with Article 1\_ hereinbelow;
  - 11.10.19 Delegation to any member of the Directorate of specific tasks or defined powers with respect to any matter not within the-exclusive competence of the Supervisory Board; and
  - 11.10.20 The adoption of a code of conduct for the Cooperative's officers and other internal rules of the Cooperative and changes and additions thereto
- 11.11 The Chairman and members of the Supervisory Board, may be dismissed before the expiration of their respective terms by a decision approved by two-thirds (2/3) of the votes of those Members present, in person or by notarially attested proxy, at a duly convened meeting of the General Assembly. Such individuals shall be liable for harm caused by them to the Cooperative in accordance with applicable RK legislation

**ARTICLE 12. APPOINTMENT, COMPOSITION AND REMOVAL  
OF THE DIRECTORATE**

- 12.1 The administration of the day-to-day operations of the Cooperative, during the interval between meetings of the Supervisory Board, shall be conducted by its Directorate, consisting of the President, one or more Vice-Presidents,, and such or other executive officers as may be appointed by the Supervisory Board from time to time.
- 12.2 The President and the members of the Directorate shall be nominated by a Members from among the Members of the Cooperative and shall be elected by the General Assembly. The President has the authority to appoint persons to the Directorate on a temporary basis
- 12.3 The President and the members of the Directorate may be dismissed before the expiration of their respective terms by a decision approved by two-thirds (2/3) of the votes of those present, in person or by notarially attested proxy, at a duly convened meeting of the General Assembly. Such individuals shall be liable for harm caused by them to the Cooperative in accordance with applicable RK legislation.
- 12.4 The Directorate shall operate within the framework and on the basis of the decisions of the General Assembly and the Supervisory Board, the present Charter and applicable legislation. The President shall oversee the day-to-day operations of the Cooperative and shall represent the Cooperative in all relations with any and all third persons within the limits of his or her competence as defined in the present Charter, the decisions of the General Assembly and the Supervisory Board and his or her employment contract. The President shall be assisted in conducting the daily operations of the Cooperative and in performing his or her other functions as set forth herein by the by other members of the Directorate.
- 12.5 Twenty (20) days before the date of the holding of the annual meeting of the General Assembly, the Directorate shall prepare, an annual report, balance sheet, and profits and loss account, and ensure the accessibility of these materials to the Members. These documents must be submitted to the Supervisory Board for its approval and upon such approval shall be submitted to the General Assembly
- 12.6 The President, within the limits established by existing legislation and/or the Supervisory Board and to the extent not reserved for action by the General Assembly or the Supervisory Board or as otherwise provided in the present Charter, shall:
- 12.6.1 control the disposition of the property of the Cooperative, including its monetary resources;

- 12.6.2 conclude contracts on behalf of the Cooperative involving an amount \_\_\_\_\_ below \_\_\_\_\_ Tenge(T \_\_\_\_\_) or its equivalent in convertible currency (at the market rate of exchange) and ensure fulfillment of all contracts entered into by the Cooperative;
- 12.6.3 effect transactions and legal acts on behalf of the Cooperative;
- 12.6.4 be responsible for the development of personnel policies with regard to non-Member employees, presenting them for the approval of the Supervisory Board, and for ensuring their fulfillment once approved;
- 12.6.5 hire and discharge non-Member employees of the Cooperative, except with respect to those positions appointed by the General Assembly and/or the Supervisory Board;
- 12.6.6 approve the policies of the Cooperative concerning divisions of responsibility and job descriptions of non-Member employees of the Cooperative, ensure that RK labor legislation is observed;
- 12.6.7 make decisions and issue orders concerning operational questions of the internal activity of the Cooperative;
- 12.6.8 prepare the necessary materials and proposals for consideration of the Supervisory Board and ensure the fulfillment of decisions of the Supervisory Board;
- 12.6.9 represent the Cooperative in relations with governmental organizations and institutions;
- 12.6.10 ensure compliance by the Cooperative with RK and local legislation; and
- 12.6.11 make decisions on all other questions concerning the day-to-day activity of the Cooperative necessary for the accomplishment of its objectives which are not within the exclusive competence of the General Assembly or the Supervisory Board.
- 12.7 The Chief Bookkeeper of the Cooperative shall be nominated by the President and appointed by the Supervisory Board. The Chief Bookkeeper shall be responsible for maintaining the books and financial records of the Cooperative and for certifying the completeness and accuracy of the Cooperative's financial statements. The Chief Bookkeeper shall qualify under applicable legislation.

- 12.8 All transactions with respect to transfers of RK or foreign currency shall require the joint signature of the President or the authorized designee thereof and the Chief Bookkeeper.

**ARTICLE 13. FINANCIAL RECORDS, ACCOUNTING AND AUDITING**

- 13.1 The fiscal year of the Cooperative shall be the calendar year (January 1 - December 31). The first fiscal year shall end with the end of the calendar year during which the Cooperative is registered.
- 13.2 Depreciation periods shall be set by the Supervisory Board in accordance with applicable law.
- 13.3 Financial record and financial reports shall be prepared and, to the extent required, submitted to the competent governmental authorities, to the Supervisory Board and to the General Assembly in conformity with the present Charter, accounting principles mandated by applicable legislation, as well as other principles agreed by the Supervisory Board or the General Assembly..
- 13.4 The Cooperative shall prepare and submit to the Members on a quarterly basis the balance sheet of the Cooperative, a profit and loss statement and other current financial information in Russian. The Cooperative shall also prepare and submit to the Supervisory Board, at its direction, periodic and annual financial reports and balance sheets, in Russian.
- 13.5 The Cooperative's financial results shall be stated in Tenge. Currency conversions shall be recorded in accordance with applicable legislation and sound accounting principles.
- 13.6 A statutory audit of the financial and commercial activities of the Cooperative shall be performed on an annual basis by an authorized independent auditor to be selected by the General Assembly's.
- 13.7 Any Member shall have the right, at its own expense, to send its duly appointed auditors, accountants, attorneys and other experts employed or engaged by them onto the Cooperative's premises for the purpose of inspecting any or all records and assets of the Cooperative, and the Cooperative shall provide its assistance and Cooperative ration in facilitating the conduct of such inspections.
- 13.8 The Cooperative and the members of the Directorate responsible for the preparation and maintenance of accounts and financial records shall bear responsibility for the authenticity of the information contained in the accounts.

## **ARTICLE 14. PROFITS AND LOSSES**

- 14.1 A yearly profit distribution shall be established by the General Assembly at its annual meeting, according to the financial results of the prior fiscal year. The amount of the profit distribution may not exceed the amount proposed by the Supervisory Board, although such proposed amount may be reduced by the General Assembly. The Cooperative may distribute profits to its Members only if its Authorized Fund has been completely paid id. Profits may be paid only out of the Cooperative's net earnings remaining after provisions to the reserves and after payment of all taxes and debts, if any. Profits shall be paid out to the Members according to their respective share of the Authorized Fund.
- 14.2 Dividends may be paid in the form of cash (by check, bank payment order, postal transfer or other authorized means), or in kind, as determined by the Supervisory Boar,.

## **ARTICLE 15. TRANSFER OF PARTICIPATORY SHARE**

- 15.1 A Member may freely transfer his or her participatory share in the Cooperative to another Member of the Cooperative. However no part of any interest in the Cooperative may be assigned or transferred to third persons except in accordance with the provisions of this Article 14.
- 15.2 Any transferee of an interest in the Cooperative shall be bound by the present Charter, as then in effect, as well as by all resolutions, acts or agreements previously adopted or concluded in the name of the Cooperative relating to the rights and obligations of the Members, including the obligation to work at or for the Cooperative, and shall execute an accession agreement to this effect, prior to the transfer of any interest.
- 15.3 A Member has the right to transfer his or her participatory share to any third person, only with the unanimous consent of all Members and subject to a right of first refusal of the remaining Members of the Cooperative.
- 15.4 A Member shall have a right of first refusal to purchase all or part of the interest of another Member wishing to transfer all or part of his or her share to a third person on a pro rata basis with respect to all Members exercising such right.
- 15.5 A Member wishing to transfer its shares shall notify the Supervisory Board in writing of his or her intention to transfer the participatory share, with complete information as to the terms of the proposed transfer. Within fifteen (15) days of receipt of said notification, the Supervisory Board shall notify each of the Members in writing of the transferring Members intention to transfer and the intended terms and conditions of transfer.

Within fifteen (15) days of receipt of the aforementioned notification thereto, each Member, shall inform the President of the Supervisory Board, by post or hand delivery i) of its consent or refusal to consent to the contemplated transfer; and ii) of its desire to purchase a pro rata portion of the share of the transferring Member on the same terms and conditions as those notified.. In the absence of a reply within the said fifteen (15) days, such Member's consent to the transfer shall be deemed to have been given, and the right of first refusal of such Member p shall be deemed to have lapse,, and the transferring Member may conduct the sale for all its shares. In the event, that one or more Member( wish to purchase some or all of the transferring Member's shares, or such sale shall be completed within thirty (30) days unless RK legislation provides an alternative time-frame for completion of such sale.

- 15.6. In case a Member withdraws voluntarily or his or her Membership is terminated by vote of the General Assembly, then the value of his or her participatory share, as well as the profit distribution to which such withdrawing Member is entitled shall be paid by the Cooperative, in cash or in kind, in accordance with the balance sheet of the Cooperative, within fifteen (15) days of approval of the annual accounts following the end of the financial year of withdrawal
- 15.6 In case of an increase in the Authorized Fund of the Cooperative, the Members shall have a priority right to subscribe proportionately for such additional participatory share. If a Member elects not to exercise such priority right of subscription, within fifteen (15) days of notification of the increase, then he or she will be considered as having waived his or her rights hereunder, and the remaining Member(s) shall be entitled to subscribe to the increase in the Authorized Fund in proportion to with their respective participatory shares.
- 15.7 In each particular case, the transfer of any participatory share in the Cooperative shall require an entry in the register of Members maintained by the Cooperative, and, if required by RK legislation, amendment of the present Charter, with subsequent notification to the competent RK authorities as provided under applicable legislation.

**ARTICLE 16. \_\_\_\_\_ DISSOLUTION AND LIQUIDATION OF THE  
\_\_\_\_\_ COOPERATIVE**

- 16.1 The Cooperative shall be of unlimited duration. However, the Cooperative shall be liquidated, dissolved and terminated upon the occurrence of any of the following events:

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- 16.1.1 Decision of the General Assembly approved by two-thirds (2/3) of all of the votes of those present, in person or by notarially attested proxy, at a duly convened meeting;
- 16.1.2 Final cessation of business operations;
- 16.1.3 Final decision of a court or arbitration tribunal of competent jurisdiction to this effect.

16.2 Should the events under paragraphs 15.1.1 or 15.1.2 above occur, the liquidation of the Cooperative shall take place according to the procedure provided for by law.

**ARTICLE 17. WORK REGIME**

- 17.1 The Cooperative's work regime will be established in accordance with RK legislation.
- 17.2 The Directorate will oversee the preparation of all necessary documents relating to the Cooperative's work regime.
- 17.3 The Work Collective shall be organized and operate within the Cooperative in accordance with mandatory RK legislation.

**ARTICLE 18. RELATIONS BETWEEN THE COOPERATIVE, THE FOUNDERS, ADMINISTRATIVE ORGANIZATIONS, AND THE WORK COLLECTIVE**

- 18.1 The Directorate shall oversee the conduct of the Cooperative's relations with its Members, RK administrative organizations and the work collective. The Directorate will ensure that appropriate agreements be entered into with the Cooperative's work collective, employees, and agents, in a manner consistent with RK legislation.
- 18.2 The Supervisory Board will oversee the Directorate with regard to the matters discussed in paragraph .

**ARTICLE 19. MISCELLANEOUS**

- 19.1 The present Charter is made in Kazakh and Russian versions, each text having equal legal force, provided that in the event of any conflict or inconsistency between the two texts, the Russian language version shall prevail.
- 19.2 The titles of the articles herein shall not affect the interpretation of the Charter.
- 19.3 The present Charter shall enter into force upon registration of the Cooperative and shall be deemed to be binding upon the Cooperative and the Members.

**IN WITNESS WHEREOF**, the Founding Members have approved and signed the present Charter in Chilik Raion, Almaty Oblast in twelve (12) originals, six (6) in Russian, and six (6) in Kazakh, as of this \_\_\_ day of \_\_\_\_\_ 1995.