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## Developments in Soviet Property Law

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# Developments in Soviet Property Law

Richard C. Schneider, Jr.

## **Abstract**

This Article summarizes certain aspects of new Soviet initiatives in the area of property law. The Article also touches on the interrelationship between the new developments in property law and developments in the area of Soviet company law that have given rise to new forms of legal entity, in particular, joint ventures.

## DEVELOPMENTS IN SOVIET PROPERTY LAW

*Richard C. Schneider, Jr.\**

Viewing the Soviet Union from a distance recalls the experience of looking into the sliding and circling jumble of colors at the back of a kaleidoscope. Important changes are happening but it is difficult to focus the eye on any one change long enough to gain an understanding of a detail. In the meantime, even if one has managed to watch one sliver develop, the whole has changed so drastically that the new understanding changes independently as a result of the radically new context.

At the heart of the changes overtaking the Soviet Union today is a new set of legislation affecting one of the principal concerns, both theoretical and historical, of Soviet communism: Soviet concepts of socialist property. The notion of "socialist property" has guided Soviet economic thinking since the abolition by the Bolsheviks after the 1917 Revolution of certain crucial types of ownership.<sup>1</sup> Now, Soviet economists and legislators are beginning to redefine "socialist property" to create an environment for economic decision-making that is more flexible than the traditional model of State-controlled central planning.

In November 1989, Mikhail Gorbachev, acting in his role as Chairman of the Supreme Soviet of the Soviet Union, promulgated a new draft of a law on property (the "Draft Law on Property"),<sup>2</sup> a new law on leasing (the "Law on Leasing"),<sup>3</sup>

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1. W.E. BUTLER, *SOVIET LAW* 175-77 (2d ed. 1988).

2. The draft law on property was published in two Soviet periodicals. *Ekonomicheskaya Gazeta*, No. 48, Nov. 1989; *Pravda*, Nov. 18, 1989 [hereinafter *Draft Law on Property*].

3. The law on leasing, known as the "Fundamental Law on Leasing of the Soviet Union and of the Soviet Republics," was also published in two Soviet periodicals. *Ekonomicheskaya Gazeta*, No. 49, Dec. 1989; *Pravda*, Dec. 1, 1989 [hereinafter *Law on Leasing*]. It took effect on January 1, 1990. *Id.*

and a new draft of a law on land (the "Draft Law on Land").<sup>4</sup> Since the publication in late 1989 of the Draft Law on Property and the Draft Law on Land, final texts of both laws have been published and adopted by the U.S.S.R. Supreme Soviet.<sup>5</sup>

Moreover, the Soviet Constitution has been amended in part to accommodate the new thinking on ownership.<sup>6</sup> This article will summarize certain aspects of these new Soviet initiatives in the area of property law. The article will also touch on the interrelationships between the new developments in property law and developments in the area of Soviet company law that have given rise to new forms of legal entity, in particular, joint ventures.<sup>7</sup>

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4. The draft law on land also appeared in the Soviet press. *Ekonomicheskaya Gazeta*, No. 50, Dec. 1989; *Pravda*, Dec. 6, 1989 [hereinafter Draft Law on Land].

5. The final text of the law on property (the "Law on Property") appeared in a Soviet newspaper. *Pravda*, Mar. 10, 1990 (a translation by the author of a part of the Law on Property is included as an appendix to this Article) [hereinafter Law on Property]. In accordance with the accompanying resolution of the U.S.S.R. Supreme Soviet, the Law on Property took effect on July 1, 1990. *Id.* The final text of the law on land (the "Law on Land") appeared in a Soviet publication. *Izvestiya*, Mar. 7, 1990 (a translation by the author of a part of the Law on Land is included as an appendix to this Article) [hereinafter Law on Land]. The accompanying resolution of the U.S.S.R. Supreme Soviet provided that the Law on Land was to enter into force on March 15, 1990, except for Article 12 (dealing with land taxes and rent) which is to come into effect on January 1, 1991. *Id.*; see Keller, *Soviets Approve the Right to Own Small Businesses*, *N.Y. Times*, Mar. 7, 1990, at A1, col. 3; Hays, *Soviet Legislators Vote to Permit Some Private Property Ownership*, *Wall St. J.*, Mar. 7, 1990, at A14, col. 1. The importance attached by President Gorbachev to these three new laws regarding ownership and property was emphasized in the speech he delivered upon being sworn in to his post in the expanded Soviet presidency:

The need to expedite economic reform is also dictated by the disquieting situation as regards the fulfillment of the Government's economic recovery program.

Nothing less than a breakthrough is needed . . . . First of all, it is imperative to bring out the immense constructive potential that is inherent in the laws on ownership, land and lease-holding . . . .

The laws cannot work all by themselves and grassroots initiative and enterprises will die unless we foster the appropriate economic environment.

We must get down to creating a full-blooded domestic market.

*N.Y. Times*, Mar. 16, 1990, at A1, col. 6.

It should be remembered that, as recently as November 17, 1989, President Gorbachev claimed he was attempting to "dissociate himself from the campaigners for private property." Keller, *Gorbachev Says It's Not Time For Soviet Private Property*, *N.Y. Times*, Nov. 17, 1989, at A16, col. 1.

6. See "U.S.S.R. Law on Instituting the Post of President of the U.S.S.R. and Making Amendments and Additions to the U.S.S.R. Constitution." *Izvestiya*, Mar. 16, 1990.

7. An article of this nature cannot be overly ambitious because it is certainly

I. SUMMARY OF PROPERTY CONCEPTS IN THE SOVIET  
CONSTITUTION AND OTHER FUNDAMENTAL  
LEGISLATION

Anyone who has followed the development of Soviet law or dealt with the Soviets in a legal context knows about the concept of "socialist ownership."<sup>8</sup> There have been commentators who have claimed that "socialist ownership" in some of its forms does not differ substantially from property concepts in market economies.<sup>9</sup> Notwithstanding such opinions, the actual development of the Soviet economy has shown that the practical application of "socialist ownership" has created an economy vastly less efficient than a market economy founded on private ownership of property.<sup>10</sup> For that reason, the Soviets have begun to legislate a different property order.

Prior to amendment of the Soviet Constitution in March 1990, articles 10 through 13 of the Soviet Constitution generally distinguished among three classes of owner: the Soviet State, collective farms and other social organizations, and citizens of the Soviet Union.<sup>11</sup> The amendments adopted in

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handicapped by the speed of legal reform in the Soviet Union. Even as this article is going to press, the Soviets are quite close to publishing significant proposed amendments to the current joint venture legislation and a draft of a company law involving foreign ownership, which would be the first of its kind in the Soviet Union. See Vecchio, *Soviet Joint Ventures: Keeping an Eye on the Goalposts*, *INT'L FIN. L. REV.*, Apr. 1990, at 37; Rosten, *Soviet Joint Ventures Riding on Troubled Waters*, *Wall St. J.*, May 7, 1990, at A14, col. 1. In view of the foregoing, the main purpose of this article is to alert the reader to certain significant developments but not to give the impression that the reforms themselves have actually been settled to the point that they may be analyzed with any degree of finality.

8. See W.E. BUTLER, *supra* note 1, at 180-81; Masevich, *The Right of State Socialist Ownership*, in *SOVIET CIVIL LAW* 122-31 (O.N. Sadikov ed. 1988); S.K. CHAUBE, *THE NEW CONSTITUTION OF THE USSR* 39-42 (1978); Butler, *Marxian Concepts of Ownership in Soviet Law*, 23 *COLUM. J. TRANSNAT'L L.* 281-96 (1985).

9. See, e.g., W. FRIEDMANN, *LAW IN A CHANGING SOCIETY* 105-07 (2d ed. 1972).

10. See *REFORMING THE SOVIET ECONOMY* 51-92 (E. Hewett ed. 1988); see also G.M. ARMSTRONG, *THE SOVIET LAW OF PROPERTY* 141-43 (1983).

11. KONSTITUTSIYA SSSR [KONST. SSSR] arts. 10-13 (USSR) (translated in NOVOSTI PRESS AGENCY PUBLISHING HOUSE, *CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS* 23-25, arts. 10-13 (1980) [hereinafter *CONSTITUTION*]). Article 10 of the Soviet Constitution, prior to amendment, read in part as follows: "The foundation of the economic system of the U.S.S.R. is socialist ownership of the means of production in the form of state property (belonging to all the people), and collective farm-and-co-operative property." *CONSTITUTION, supra*, art. 10 (translating KONST. SSSR, art. 10). In 1971, the Council for Mutual Economic Assistance adopted a program that gave rise to the so-called "international economic

March 1990 to the Soviet Constitution (the "Amendments") essentially maintain the distinction among the three classes of owner but with the important difference that the concept of "collective ownership" has been broadened to include property held by "lease enterprises, collective enterprises, cooperatives, joint stock companies, business organizations and other associations."<sup>12</sup> In fact, the concept of "collective property" itself is described as being "created through the transformation, as provided by law, of State property, and through the voluntary contribution of property of citizens and enterprises."<sup>13</sup> The benefits accruing to an owner under Soviet law include the three primary rights to "possess, use, and dispose of property within the limits established by law."<sup>14</sup> These rights were limited, first, by the restricted classes of owners permitted by the Soviet Constitution and, second, by other provisions of the Soviet Constitution itself and by supplementary Soviet legislation.<sup>15</sup>

Article 11 of the Soviet Constitution prior to amendment represented the principal legal restriction relating to property. It established that, except for goods of a purely consumer nature and limited classes of dwellings, all rights to property of any kind (and particularly the productive kind) devolved from the State. The Soviet State retained title in all circumstances to such property. Specifically, article 11 provided that the land

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organization" (the "IEO"). See BLOED, *THE EXTERNAL RELATIONS OF THE COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE* 9-10, 18-21 (1988). The IEO was, however, a form of economic integration between socialist countries and, except for the fact that it was supra-national, did not involve any real innovation in the restricted concept of "socialist ownership." Many practical legal issues that are quite similar to some of the issues discussed in this article with respect to joint ventures did arise in the functioning of IEOs. However, hybrid forms of ownership, such as the IEO, are beyond the scope of this article, which focuses particularly on the effect of legal reforms in an exclusively commercial context.

12. See CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS, as amended, arts. 10 and 12 (appendix).

13. See *id.* art. 12.

14. See COLLECTED LEGISLATION OF THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE CONSTITUENT UNION REPUBLICS Release 83-1, 15, art. 19 (1983) [hereinafter COLLECTED LEGISLATION] (translating Fundamental Principles of Civil Legislation of the USSR and Union Republics, art. 19 [hereinafter Fundamental Principles]); see also W. GRAY & R. STULTS, *CIVIL CODE OF THE RUSSIAN SOVIET FEDERATED SOCIALIST REPUBLIC* 25, art. 92 (1965) [hereinafter CIVIL CODE] (translating GRAZHDANSKII KODEKS [GK RSFSR], art. 92).

15. See *infra* notes 16-20 and accompanying text.

of the Soviet Union, and all of the resources extractable therefrom, belonged to the Soviet State.<sup>16</sup> In addition, article 11 provided that the Soviet State "owns the basic means of production in industry, construction, and agriculture; means of transport and communication; the banks; the property of State-run trade organizations and public utilities, and other State-run undertakings; most urban housing; and other property necessary for State purposes."<sup>17</sup>

Broad language such as that in former article 11 has hampered the flexibility and efficiency of Soviet institutions and organizations in their commercial undertakings with Western partners. For instance, in the joint venture context, the Soviets correctly (even now) argue in negotiations that no Soviet partner can transfer title to land to the joint venture entity.<sup>18</sup> The most that the Soviet partner may transfer is a bundle of development rights relating to the land in question. Sophisticated Westerners are generally not surprised by the notion that the Soviets cannot transfer title to land. However, if one reads article 11 in its old form strictly, it would seem that a Soviet partner could not even transfer title to buildings or equipment to the joint venture but only "rights to use" buildings and equipment. Nonetheless, both Soviet and Western partners have acted as though the joint venture decree of January 1987<sup>19</sup> created a special form of property that enjoyed a special status under the Soviet Constitution.<sup>20</sup>

The existence of such conflicts between legislative decrees

16. CONSTITUTION, *supra* note 11, art. 11, at 23-24 (translating KONST. SSSR, art. 11).

17. *Id.*

18. This constitutional restriction made its way into the joint venture decree of January 1987. See INT'L CHAMBER OF COMMERCE, GUIDE TO JOINT VENTURES IN THE USSR 53, 54 (1988) [hereinafter GUIDE TO JOINT VENTURES] (translating Decree of the USSR Council of Ministers on the Establishment in the Territory of the USSR and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries, adopted Jan. 13, 1987, Decree No. 49, arts. 15-18 [hereinafter Joint Venture Decree]); *infra* notes 28-39 and accompanying text. The Joint Venture Decree provides that the Soviet partner may contribute "rights to use land" (but not title to the land itself) to the "statutory fund" of the joint venture. GUIDE TO JOINT VENTURES, *supra*, at 53 (translating Joint Venture Decree, art. 11).

19. See *infra* notes 30-39 and accompanying text.

20. See Bregman & Lawrence, *New Developments in Soviet Property Law*, 28 COLUM. J. TRANSNAT'L L. 190, 194-95 (1990).

and the Soviet Constitution motivated the adoption of the Amendments this year. Apart from the change mentioned above in the definition of "collective ownership," several other rather fundamental changes in direction merit discussion.

First, although former article 10 of the Constitution laid the cornerstone of Soviet property relations by providing that the "foundation of the economic system of the U.S.S.R. is socialist ownership of the means of production,"<sup>21</sup> the amendments provide for the deletion of that language and make no effort to erect a similarly dogmatic principle in its place. In fact, article 10 now begins with the principle that "the economic system of the U.S.S.R. shall develop on the basis of ownership by Soviet citizens, as well as collective and state ownership."<sup>22</sup> Furthermore, article 11 in its new guise provides that a Soviet citizen may own property of a consumer and a productive nature "acquired with income from labor or by other legal means."<sup>23</sup> (The sentence continues, however, to provide that citizens may not own property "the acquisition of which . . . is prohibited."<sup>24</sup>)

Finally, although this may be a change in emphasis and not in substance, article 10 now provides that land is the property of the people of the territory where it is found,<sup>25</sup> whereas the former version of article 11 reserved land ownership to the State.<sup>26</sup> Also, the new version of article 10 explicitly states that land may be "allotted to citizens, enterprises, institutions and organizations for their use."<sup>27</sup>

Notwithstanding the changes to the Constitution, certain restrictions in Soviet law will continue to have an influence on the ability of Soviet enterprises to participate in commercial and financial transactions with non-Soviet partners. For instance, the right to execute a judgment (foreign or otherwise)

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21. CONSTITUTION, *supra* note 11, art. 10, at 23 (translating KONST. SSSR, art. 10).

22. CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS, *supra* note 12, art. 10.

23. *Id.* art. 11.

24. *Id.*

25. *Id.* art. 10.

26. CONSTITUTION, *supra* note 11, art. 11, at 24 (translating KONST. SSSR, art. 11).

27. CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS, *supra* note 12, art. 10.



against State property is quite restricted.<sup>28</sup> Generally, a judgment creditor (or a financial creditor) of the Soviet State or of a Soviet collective or organization has no right to levy the judgment or credit against State assets of real value to a creditor (*e.g.*, buildings, installations, equipment, and any other basic productive capital asset), whether or not the right to possess, use, and dispose of those assets has been given to the Soviet debtor entity.<sup>29</sup> Likewise, those assets can never be pledged by the Soviet entity in the first place in order to obtain credit.<sup>30</sup> The combined effect of such "protections" relegates the Soviet entity in physical possession of property to the status of a lessee with fairly typical "lessee" restrictions on the ability to pledge or transfer the "leased" assets.

Again, it is clear that when restrictive property concepts such as these are transferred to the purely commercial context of the new Soviet cooperatives or joint ventures they create significant impediments to normal economic operations. Little will be as important to the smooth functioning of a joint venture as the ability to secure credit on the basis of a grant to creditors of some form of security interest in the joint venture's assets.<sup>31</sup>

In 1981, the Soviets introduced the concept of "*operativnoe upravlenije imushchestvom*" or "operative management of prop-

28. See COLLECTED LEGISLATION, *supra* note 14, art. 22 at 16 (translating Fundamental Principles, *supra* note 14, art. 22). *But see infra* notes 65-69 and accompanying text (discussing changes introduced in this regard in the Law on Property).

29. See *id.* arts. 22-24, at 16-17 (translating Fundamental Principles, *supra* note 14, arts. 22-24); see also CIVIL CODE, *supra* note 14, art. 101, at 27 (translating GK RSFSR, art. 101) (exempting from execution buildings, structures, tractors, combines, means of transportation, property related to capital assets, and seed and fodder reserves, of collectives, cooperatives, and associations).

30. See COLLECTED LEGISLATION, *supra* note 14, art. 22, at 16 (translating Fundamental Principles, *supra* note 14, art. 22).

31. This article will not address strictly personal property, although there have been developments in the concept of personal property in the Soviet Union. Chief among the developments in the concept of personal property is the new constitutional provision discussed above. CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS, *supra* note 12, arts. 10-11. The new provision should, however, be recalled in the context of the old. The former basic provision on personal property was found in article 13 of the Soviet Constitution where it was written that "[p]roperty owned or used by citizens shall not serve as a means of deriving unearned income or be employed to the detriment of the interests of society." CONSTITUTION, *supra* note 11, art. 13, at 24-25 (translating KONST. SSSR, art. 13).

erty.”<sup>32</sup> “Operative management” was meant to give greater control over the use of property to Soviet enterprises without bringing into question the fundamental enjoyment by the Soviet State of the right to the property itself. Under the regime of “operative management,” the Soviet enterprise acquired the rights of “possession, use, and disposition” of property that had been granted to it by the Soviet State.<sup>33</sup> Although recourse to the system of “operative management” introduced some flexibility, it still enshrined somewhat cumbersome restrictions on the ability of State enterprises to act in their own self-interest. As will be described below, the Soviets have now departed somewhat from the concept of “operative management” in the context of State enterprises to embrace a notion that seems to comport even broader advantages, again, however, without unequivocally abandoning the principle of State or socialist ownership.<sup>34</sup>

Before discussing some of the generally liberalizing developments that have occurred in Soviet law, it is important to outline briefly some additional restrictions imposed by “socialist ownership” under the regime of “operative management.” Along with the operative rights to “possess, use, and dispose” of property granted to a Soviet entity goes the obligation to use the property itself to carry out the specific economic or commercial task that has been assigned to the “owner” by the central planners.<sup>35</sup> In a sense, the owner’s property rights have no existence independent of the assigned use to which they must be put. Accordingly, economic entities have no discretion under Soviet law to divert the property rights “granted” to them to uses that are different from those mandated by the State.

Even though the Soviet State may transfer to farm collectives or other social organizations the rights to “possess, use,

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32. See COLLECTED LEGISLATION, *supra* note 14, art. 26-1, at 18-19 (translating Fundamental Principles, *supra* note 14, art. 26-1) (stating that property allocated for state, collective, and cooperative organizations shall be used for operative management of those organizations).

33. *Id.*

34. See *infra* notes 56-57 and accompanying text.

35. See COLLECTED LEGISLATION, *supra* note 14, arts. 23-24, at 16-17 (translating Fundamental Principles, *supra* note 14, arts. 23-24); see also CONSTITUTION, *supra* note 11, art. 12, at 24 (translating KONST. SSSR, art. 12) (stating that entity property comprises assets required for “purposes laid down in their rules”).

and dispose" of certain property necessary to carry out the economic tasks of the collective or organization involved, it is reasonably clear that such a right does not include free alienation with respect to significant productive assets, even to other collectives or organizations for use in the same economic context. Such transfers of property, for instance, must ordinarily be approved by the appropriate state body in Moscow, as set forth in applicable legislation.<sup>36</sup> Absent the special status that, in practice, has been accorded to joint ventures with Western partners, it could be inferred from legislation of this kind that joint ventures are subject to similar restrictions.

## II. DEVELOPMENTS IN THE WAKE OF THE JOINT VENTURE DECREE

The Decree of the U.S.S.R. Council of Ministers of January 13, 1987, on the Establishment in the Territory of the U.S.S.R. and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries (the "Joint Venture Decree"), in a sense initiated the new direction in Soviet thinking about property.<sup>37</sup> Interestingly, however, the new thinking seemed to come not so much from a focus on the nature of property relations as from the economic requirements of new legal entities such as joint ventures.<sup>38</sup> The Joint Venture Decree, while giving birth to a new form of "legal entit[y] under Soviet law,"<sup>39</sup> did not deal conceptually with the problems posed by the former (but recently amended) article 11 of the Soviet Constitution and the concept of "socialist ownership."

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36. CIVIL CODE, *supra* note 14, art. 96, at 25-26 (translating Fundamental Principles, *supra* note 14, art. 96).

37. GUIDE TO JOINT VENTURES, *supra* note 18 (translating Joint Venture Decree, *supra* note 18).

38. A new legal path similarly opened at the time of the adoption of the law on cooperatives but again a new form of legal entity was the stimulus for rethinking certain property relations. The law on cooperatives (the "Law on Cooperatives") was adopted by the Supreme Soviet on June 1, 1988. USSR. Law on Cooperatives, June 1, 1988, 28 I.L.M. 719 (W.G. Frenkel trans.) (citing Ved. Verkh. Sov. SSSR (1988), No. 22, Item 355). This Article will focus on the Joint Venture Decree rather than on the Law on Cooperatives. For comments on the Law on Cooperatives, see Frenkel, *Soviet Cooperatives: New Private Enterprises as Trade and Foreign Investment Partners in the U.S.S.R.*, ICSID REVIEW—FOREIGN INVESTMENT LAW JOURNAL 63-89 (1989).

39. GUIDE TO JOINT VENTURES, *supra* note 18, art. 6, at 53 (translating Joint Venture Decree, *supra* note 18, art. 6).

As mentioned above, former article 11 of the Soviet Constitution reserved to the Soviet State full title to all productive or potentially productive "property" in the Soviet Union.<sup>40</sup> The Joint Venture Decree set up a potential conflict in expectations between Soviet enterprises, which must conform to article 11 of the Constitution and other tenets of "socialist ownership," and the Western companies which participate in Soviet joint ventures and have a very different concept of property ownership.

The Joint Venture Decree lists the forms of property that may be contributed to the "statutory fund," the fund which is to be the property of the new joint venture legal entity. The list includes "buildings, structures, equipment and other assets, rights to use land, water and other natural resources, buildings, structures and equipment, as well as other proprietary rights (including those to work inventions and use know-how), money assets in the currencies of the partners' countries and in freely convertible currencies."<sup>41</sup> The list itself causes no surprise from the standpoint of Western companies. However, Western companies would, in most cases, expect Soviet partners to be able to transfer the property they purport to transfer to the joint venture for the benefit of the partners and in proportion to their joint venture interests. In fact, Western partners would likely expect Soviet partners to make representations and warranties to that effect.

Whether a Soviet partner agrees to make such representations may depend on how far it is willing to gamble that the burgeoning Soviet joint venture practice will be supported by Soviet jurists, judges, and legislators, since the representation would not currently be unequivocally supported by Soviet law itself. The Joint Venture Decree gives only equivocal support to such a representation. Article 15 of the Joint Venture Decree most fully sets forth the concept of joint venture property:

A joint venture is entitled under Soviet legislation to own, use and dispose of its property in accordance with the objectives of its activities and the purpose of the property.

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40. See *supra* notes 16-20 and accompanying text.

41. GUIDE TO JOINT VENTURES, *supra* note 18, art. 11, at 53 (translating Joint Venture Decree, *supra* note 18, art. 11).

The property of a joint venture shall not be requisitioned or confiscated in the administrative order.

The property rights of a joint venture shall be protected under Soviet legislation protecting state-owned Soviet organizations. Execution can be applied to the property of a joint venture only by a decision of bodies empowered under U.S.S.R. legislation to hear disputes involving joint ventures.<sup>42</sup>

Article 18 of the Joint Venture Decree qualifies the joint venture entity as a limited liability entity under Soviet law and contains another significant provision relating to property. It states that "a joint venture shall be liable on its obligations in all of its property."<sup>43</sup>

Both articles 15 and 18 of the Joint Venture Decree seem to perpetuate in some respects the notion of "socialist ownership" and, at the same time, break new ground. The provision requiring the joint venture property to be used "in accordance with the objectives of its activities and the purpose of the property"<sup>44</sup> resembles a key idea in the concept of "socialist ownership." Yet, article 18 seems to veer from the equally important concept that creditors have no rights to certain productive property that is held in accordance with the regime of "socialist ownership." The statement in article 15 of the Joint Venture Decree that the "property rights of a joint venture shall be protected under Soviet legislation protecting State-owned Soviet organizations"<sup>45</sup> again recalls "socialist ownership." It is interesting, however, to note that the Joint Venture Decree does not expressly prohibit the partners to a joint venture from pledging the property of the joint venture to obtain credit.

Taken together, the provisions affecting property in the Joint Venture Decree give a somewhat contradictory impression. Can the Western partner in a Soviet joint venture legitimately expect that the joint venture owns title to the property contributed by the Soviet partner to the statutory fund of the joint venture? Or, does the Soviet entity contribute a right to something that may be revoked at any time by the central plan-

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42. *Id.* art. 15, at 54 (translating Joint Venture Decree, *supra* note 18, art. 15).

43. *Id.* art. 18, at 54 (translating Joint Venture Decree, *supra* note 18, art. 18).

44. *Id.* art. 15, at 54 (translating Joint Venture Decree, *supra* note 18, art. 15).

45. *Id.*

ners or a body with either *de facto* or *de jure* jurisdiction over the Soviet partner? Do creditors of the Soviet joint venture entity, including the Western partner, have a claim against the joint venture's property, thereby signalling a new category of property in the Soviet Union, or is the Joint Venture Decree a confusing (perhaps seductive) piece of legislation that implies that these rights might exist without really granting them?

Finally, and even more troubling for the Western partner, what happens to the property of the Western partner once it has been contributed to the new Soviet entity? Has the Western partner lost rights to its contribution that were not foreseen and agreed to in the joint venture documentation? Such concerns on a governmental level have led in some cases to the signing of bilateral or multilateral investment protection treaties between the Soviet Union and Western governments, including West Germany, Belgium, Luxembourg, France, Austria, and the United Kingdom.<sup>46</sup> The next section of this article will address these questions from the standpoint of the new Soviet legislation on property.

### III. THE LAW ON PROPERTY

Among the initiatives proposed or adopted last fall, the Law on Property<sup>47</sup> is in many ways the most significant.

The text of the Law on Property actually adopted in March varies in several interesting ways, though perhaps not fundamentally, from the discussion draft published in the fall. The most interesting change represents an ideological shift rather than a substantive change in the legal rights pertaining to property. The discussion draft commenced in the first paragraph of article 1 with a statement affirming the priority of "so-

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46. Treaty on Promotion and Reciprocal Protection of Investments, June 13, 1989, 29 I.L.M. 351 (1990) (Federal Republic of Germany-USSR); Agreement Concerning the Promotion and the Reciprocal Protection of Investments, Feb. 9, 1989, 29 I.L.M. 299 (1990) (Belgium-Luxembourg-USSR); Agreement for the Promotion and Reciprocal Protection of Investments, July 3, 1989, 29 I.L.M. 317 (1990) (France-USSR); Abkommen zwischen der Republik Oesterreich und der Union der Sozialistischen Sowjetrepubliken ueber die Foerderung und den gegenseitigen Schutz von Investitionen, Feb. 8, 1990 (Austrian-USSR Investment Treaty); Agreement for the Promotion and Reciprocal Protection of Investments, Apr. 6, 1989, 29 I.L.M. 366 (1990) (USSR-United Kingdom). The United States and the Soviet Union are currently negotiating a bilateral investment protection treaty.

47. Law on Property, *supra* note 5.

cialist ownership" and, in the second paragraph, with a definition of the nature of "socialist property."<sup>48</sup>

Finally, the last paragraph of article 1 of the discussion draft stated simply that the "State promotes the augmentation of socialist property and ensures equal conditions for the development of all its varieties and forms."<sup>49</sup> These statements, coming as they did by way of introduction to the body of the law, signalled the express intent of the drafters (i) not to abandon the concept of "socialist ownership" and (ii) to incorporate all of the new reforms within the rubric of "socialist ownership," thereby insulating the concept itself from further liberalizing measures.<sup>50</sup>

Consistent with the changes in the Soviet Constitution, the Law on Property as adopted in March has arguably rejected both the form and the substance of "socialist ownership." Instead, the adopted text begins in article 1 with rather broad, more open-ended formulations about the rights of a property owner to possess, utilize, and dispose of his property; to carry out economic activity with respect to his property; and to conclude contracts with other Soviets regarding their employment in connection with his property.<sup>51</sup> Although the adopted text does state that ownership must not damage the environment or violate other protected rights, the only bow in the direction of the discussion draft's priority given to "socialist ownership" comes in the last paragraph of article 1 where it is written that "the use of any form of ownership shall exclude the alienation of the worker from the means of production and the exploitation of one person by another."<sup>52</sup> Still, it must be remembered that, notwithstanding the changes that are made, the Law on Property does not mention or make specific provision for *private* property.

48. Draft Law on Property, *supra* note 2, art. 1(1)-(2).

49. *Id.* art. 2(3).

50. Draft Law on Property, *supra* note 2. According to the discussion draft, "socialist property" is "created through the joint or individual labor of Soviet citizens and ensures their prosperity, material and personal independence and social protection." *Id.* art. 1(2).

51. Law on Property, *supra* note 5, art. 1.

52. *Id.* art. 1(6). This last statement should be read more in connection with some of the bias against cooperatives and the use of "intermediaries" (persons that allegedly do not provide any "value-added" component to the price of a product) than as a substantive reservation in the context of the Law on Property.

The rights granted to owners in article 1(2) of the Law on Property to "own, use and dispose" of property and to carry out with respect to property "any economic or other activity not prohibited by law" may be viewed as a general loosening from the restriction imposed even by the Joint Venture Decree that property be used "in accordance with the objectives of [the joint venture's] activities and the purpose of the property."<sup>53</sup> As mentioned earlier, the reference to the "purpose of the property" in article 15 of the Joint Venture Decree parallels the concept of "operative management" of property.

With respect to its substantive provisions, the Law on Property begins with a section devoted to "General Provisions" and continues with five sections on the following subjects: (i) property of citizens of the USSR; (ii) property of collectives; (iii) State property; (iv) property of joint ventures, foreign citizens, organizations, and governments; and (v) guarantees of the rights of property accorded in the Law on Property.<sup>54</sup>

Article 2 of the Law on Property states explicitly that the Law on Property, together with the Soviet Constitution, constitute the fundamental law on the subject matter of property in the Soviet Union. In light of the recent changes in the Soviet Constitution, the Law on Property and the Soviet Constitution are generally consistent. More specifically, the Constitution's amended approach to personal and collective property is affirmed in the rights granted to owners in the Law on Property to own and exploit broad classes of productive property for the realization of "any economic or other activity not prohibited by law."<sup>55</sup> Article 3(2) of the Law on Property expressly recognizes the right of the owner of property to the "results of the productive use of property (products and revenues)."<sup>56</sup>

Article 3 of the discussion draft of the Law on Property contained a new concept that a property owner could transfer

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53. See GUIDE TO JOINT VENTURES, *supra* note 18, art. 15, at 54 (translating Joint Venture Decree, *supra* note 18, art. 15).

54. Law on Property, *supra* note 5.

55. *Id.* art. 1(2).

56. *Id.* art. 3(2). Article 3(2) in the discussion draft of the Law on Property contained not only references to products and revenues but to crops as well. The omission of crops in the final text may have been intended to reduce the possibility of overlap with the Law on Land. See Draft Law on Property, *supra* note 2, art. 4(1).



its "jurisdiction" over particular property to "State organs but also enterprises, organizations, entities, citizens and other persons."<sup>57</sup> It was not specified whether such transfers would require prior approval of or notification to any State body. In what is arguably a narrowing of the broad concept of "property" rights in the final text of the Law on Property, this right to transfer rights to property has been omitted. This omission illustrates that the Soviets continue to struggle with the idea of alienability of property, which is, of course, a basic principle of Western property law. Given the omission, it is unclear what attitudes toward transfer of property rights would prevail, not to mention applicable procedures for alienation of property.<sup>58</sup>

Although the "General Provisions" of the Law on Property contain arguably liberalizing and even somewhat opened rights with respect to property, those rights could be greatly constricted if the definition of "property" itself were too narrow. Article 3, however, defines "property" subject to ownership quite broadly to include "land, subterranean resources, water, plant and animal life, buildings, structures, equipment, objects of material and spiritual culture, money, securities and other property."<sup>59</sup>

The "General Provisions" of the Law on Property list certain "forms of property" that will be permissible in the U.S.S.R. In a sense paralleling the Soviet Constitution, article 4(1) states that property may belong to Soviet citizens, collectives and State organizations.<sup>60</sup> Article 4(1) continues, however, to list "foreign governments, international organizations, foreign legal entities and foreign individuals" as also being entitled to claim the benefits of ownership.<sup>61</sup> Each of these "forms of property" is spelled out in greater detail in subsequent sections of the Law on Property.<sup>62</sup> Article 4(2) recog-

57. Draft Law on Property, *supra* note 2, art. 3(2).

58. For example, how would a joint venture with Western participation go about transferring some of the property in its statutory fund to an affiliate either within or outside of the Soviet Union?

59. Law on Property, *supra* note 5, art. 3(1).

60. *Id.* art. 4(1).

61. *Id.*

62. *Id.* The final text of the Law on Property omitted in this article the express recognition contained in the discussion draft that citizens may own property of a consumer and productive nature. Draft Law on Property, *supra* note 2, art. 5(1). Although the reference itself is gone, it is nonetheless clear that ownership by citi-

nizes in broad terms the ability to create mixed forms of property, including property owned by joint ventures with the participation of Soviet and foreign legal entities and persons.<sup>63</sup> Finally, joint forms of ownership are explicitly referred to and approved of in article 4(4).<sup>64</sup>

Perhaps the most interesting departure from restrictions of "socialist ownership" is contained in article 5 of the Law on Property. Article 5 establishes the right of creditors to seize the property of a "legal entity" to satisfy the legal entity's obligations.<sup>65</sup> Whereas the Draft Law on Property referred specifically to certain kinds of entities,<sup>66</sup> the adopted text is broader because it is generic. Furthermore, the property may "belong" to the legal entity involved pursuant to any of three forms of ownership: "ownership," "complete economic control" or "operative management."<sup>67</sup> Finally, article 5 establishes the principle that the owner of a legal entity is not responsible for the obligations of that legal entity *vis-à-vis* third parties.<sup>68</sup> The draft had only referred to the insulation of the Soviet government from the obligations of such independent legal entities. Although the Joint Venture Decree incorporates a similar concept, it does not recognize so directly that a separate property regime is applicable to Soviet joint ventures.<sup>69</sup>

The next major division of the Law on Property treats property owned by the State. Interestingly, the provisions on State property utilize a concept with respect to the property regime applicable to State enterprises (as opposed to State organizations) that is arguably broader than "operative management" of property. The concept that may be intended to replace "operative management" of property with respect to State enterprises is first mentioned in the Law on Property in

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zens of productive property is contemplated in the Law on Property and permitted in the amended Constitution.

63. Law on Property, *supra* note 5, art. 4(2).

64. *Id.* art. 4(4).

65. *Id.* art. 5(1).

66. Draft Law on Property, *supra* note 2, art. 8. The list comprised "[e]nterprises, associations and organizations, cooperatives, economic partnerships and joint-stock companies." *Id.*

67. Law on Property, *supra* note 5, art. 5(1).

68. *Id.*

69. See GUIDE TO JOINT VENTURES, *supra* note 18, art. 18, at 54 (translating Joint Venture Decree, *supra* note 18, art. 18).

article 5(1). However, it is described explicitly in article 24(1) of the Law on Property:

Property which is owned by the State and assigned by the State to a government enterprise will belong to that enterprise by *right of complete economic control* (*polnoe khozjastvennoe vedenije*).

In realizing the right of complete economic control of its property, the enterprise shall possess, use and dispose of the indicated property and by its own discretion accomplish with respect to such property any lawful activity. The rules regarding the right of ownership shall be applicable to the right of complete economic control as long as contrary provisions are not set forth in the laws . . . .<sup>70</sup>

Retention of the concept of "operative management" of property with respect to government organizations is indicative of Soviet thinking in this regard. Government organizations are presumably less economically and managerially independent than the State enterprises operating pursuant to the Law on State Enterprises.<sup>71</sup>

Section V of the Law on Property establishes the separate property regime applicable to Soviet joint ventures.<sup>72</sup> Article 27 in a sense closes the critical link that had been left open in the Joint Venture Decree. Whereas the Joint Venture Decree had provided for the nature of the property that could be contributed to the statutory fund and had declared that a joint venture is liable for its own obligations, it had not specifically provided that the contributions to the statutory fund became unequivocally the property of the joint venture; in essence, one may argue that article 27 of the Law on Property read in conjunction with article 4(2) so provides.<sup>73</sup> Furthermore, article 27 adopts the rather broad standard that property may be the property of a joint venture so long as it is "necessary" for the activities of the joint venture as those activities may be de-

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70. Law on Property, *supra* note 5, art. 24(1) (emphasis added).

71. *Id.* art. 26(1). If the new *private* property initiatives recently mentioned by President Gorbachev are undertaken, there presumably will be no need for further terminological ways to avoid what the Soviets are coming to recognize is a necessary facet of economic life in the 20th century, private property ownership.

72. *See id.* arts. 27-30.

73. *Id.* arts. 4(2), 27.

scribed in the joint venture agreement and charter.<sup>74</sup>

Section VI of the Law on Property contains provisions for statutory investment protections. The section is designed in part to enshrine the kinds of protections that would give sufficient comfort to Western companies to invest in the Soviet Union: The basic protections are contained in articles 31(2), 33(1) and (2), and 34.<sup>75</sup>

Article 31(2) states simply that losses occasioned by a termination of property rights, resulting from the enactment of laws, must, upon the decision of a court, be compensated for by the Soviet State (or autonomous republic). Of course, unless there is sufficient confidence in the court system and in the rule of law generally, such a provision may fail to give much comfort. Moreover, even if a company were to have the required confidence in the system, it is very difficult to predict the basis on which the losses would be calculated (*e.g.*, the value of equipment on the Soviet market or the value of the same equipment if it were taken out of the Soviet Union and sold in Europe).<sup>76</sup>

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74. *Id.* art. 27. In addition, article 29 of the Law on Property provides generally that foreign legal entities may own property in the Soviet Union that is of a productive nature, including "industrial and other enterprises, buildings and installations and other property." *Id.* art. 29. However, it qualifies that assertion by providing that such property may be owned "in accordance with the terms and procedures prescribed by the laws of the USSR." *Id.* President Gorbachev on June 4, 1990 signed a new Soviet company law which will go into effect, for the most part, on January 1, 1991. It was not possible to analyze the new company law (which does not address foreign participation in Soviet companies) for this article but it contains provisions relevant not only to the Law on Property but to the Joint Venture Decree as well. It may be worth noting that article 27 of the Law on Property seems to view the joint stock company as a form of joint undertaking that may be entered into by Soviet and foreign legal entities. *Id.* art. 27. Article 15 of the Law on Property (in the section of the law devoted to "collective property") provides for a property regime applicable to Soviet companies. *Id.* art. 15. Article 15, however, in identifying the entities that may own shares in Soviet companies, omits mention of foreign organizations or even Soviet joint ventures with foreign participation. *Id.* This omission may simply be a matter of inattention to the drafting of this particular article. Article 15 (1) of the Law on Property provides that a "[s]tock company may be the owner of property created through the sale of shares and by virtue of its own commercial activities or any other means permitted by the law." *Id.* art. 15(1).

75. *Id.* arts. 31(2), 33(1)-(2), 34.

76. Article 32 deals generally with the defense of property rights, including by owners themselves. *Id.* art. 32. Article 32(4) provides that the protections contained in article 32 belong to entities whether or not they are "owners" if they possess property on the basis of "full economic control" or "operational control." *Id.* art. 32(4).

Article 33(1) generally prohibits a termination of property rights regarding certain kinds of land, except in specific circumstances to be described in the law, and only then in accordance with specific procedures and with appropriate indemnification. Article 33(2) provides that property in general may not be taken by the State unless such a taking is in connection with enforcement of the rights of creditors against the owner of the property, a requisitioning or a confiscation, both of which terms are defined in article 33(2). Finally, article 34 contemplates that any act adopted by any governmental agency that contradicts the law may be deemed unenforceable.<sup>77</sup>

As a result of article 27 and articles 31 through 34 of the Law on Property, Western joint venture partners should be partially reassured as to the status of the property that they contribute to the statutory fund of a joint venture. Notwithstanding the protections contained in articles 31 through 34 of the Law on Property, however, the U.S. government, concerned that internal laws may change, continues to pursue a bilateral investment protection treaty with the Soviet Union.<sup>78</sup>

#### IV. *THE LAW ON LAND AND THE LAW ON LEASING*

##### A. *The Law on Land*

The Law on Land<sup>79</sup> attempts to erect a comprehensive framework for land regulation in the Soviet Union. It basically maintains the fundamental tenet of "socialist ownership" that the land is owned by the State, but it does dilute the principle somewhat by providing in article 3 that the land is the property of the people living on the territory in question.<sup>80</sup> Inasmuch as the Law on Property relates to land (*i.e.*, land is included in the "objects of ownership" set forth in article 3 of the Law on Property)<sup>81</sup> it remains to be determined how the Law on Land and the Law on Property will be read together. Although it does not appear that the Law on Land and the Law on Property are necessarily in conflict, there may be some points of

77. *Id.* arts. 33(1)-(2), 34.

78. *See supra* note 46 and accompanying text.

79. Law on Land, *supra* note 5.

80. *Id.* art. 3.

81. Law on Property, *supra* note 5, art. 3.

interpretation which could be complicated by the existence of two texts with possibly varying emphases.

Article 4 of the Law on Land states that jurisdiction with respect to the disposition of land lies with the councils of peoples' deputies.<sup>82</sup> Otherwise, "purchase and sale, donations, pledging, and free exchanges of land are unenforceable."<sup>83</sup> Importantly for Western companies, article 6 of the Law on Land specifically grants to Soviet joint ventures with Western participation the right to use land on a permanent or temporary basis. Moreover, article 7 of the Law on Land permits the leasing of land by such joint ventures as well as by foreign governments and foreign companies.

The rights to possess and use land (including the rights of a lessee under Soviet law) may be revoked by the local council of peoples' deputies in the case of, *inter alia*, "termination of activities by the enterprise" under article 9(3) or "use of the plot for purposes other than those designated" under article 9(4).<sup>84</sup> It should be noted, however, that users of land under the Law on Land are entitled to indemnification for improvements they have made to land for their own account once their rights to use the land have discontinued.<sup>85</sup>

To the extent that joint ventures created under the Joint Venture Decree or other Western entities avail themselves of the rights contained in the Law on Land they should, in principle, benefit from the remaining provisions of the Law on Land, a significant number of which relate to indemnification for unauthorized (or even authorized) "takings" of land (to borrow a term from U.S. jurisprudence).<sup>86</sup>

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82. Law on Land, *supra* note 5, art. 4.

83. *Id.* art. 53.

84. *Id.* art. 9(3), (4). Article 10 of the Law on Land provides that a transfer of ownership of a building or structure operates to transfer the right to possess or use the corresponding land. *Id.* art. 10.

85. *Id.* art. 17(4).

86. *Id.* arts. 11, 39. Specifically, article 11 and 39 of the Law on Land generally entitle the land possessor or user to "compensation" in the event of a taking. *Id.* Interestingly, the right to compensation may be claimed by "lessees" of land as well as by more customary land users and the right may be triggered by not only a taking of land in its entirety but by a "limitation" by the authorities in the rights originally granted. *Id.*

### B. *The Law on Leasing*

The Law on Leasing went into effect on January 1, 1990.<sup>87</sup> The Law on Leasing is quite broad and accords the right to lease property within its scope to, among other beneficiaries, joint ventures and foreign legal persons.<sup>88</sup> Article 3 of the Law on Leasing sets forth a broad list of property susceptible to be leased, including land, buildings, equipment, other types of facilities and certain means of transport.<sup>89</sup> The Law on Leasing states that new laws will be enacted in the event that any specific kind of property from among the generic types included in article 3 is to be excluded from leasing.<sup>90</sup> Although the leasing of assets will not entail a transfer of the right to ownership, the lessee is entitled under the Law on Leasing to retain the product of its use of the land and any profit derived thereby.<sup>91</sup>

The subject matter of some of the more important provisions of the Law on Leasing may be summarized as follows: article 7 sets forth some of the statutory requirements that must be met by the lease agreement; other requirements include provisions with respect to rent (article 8), purchase of leased property (article 10) and lease term (article 12). Article 13 contains, among others, provisions with respect to the expiration and extension of the lease agreement. Article 15 sets forth a statutory right to a kind of "quiet enjoyment" of the leased property.<sup>92</sup>

### CONCLUSION

The inconsistencies between restrictions bound to the concept of "socialist ownership" and liberalization in Soviet economic and company law have begun to be removed and will apparently continue to be removed. Even though three major pieces of legislation have been adopted in the area of Soviet property law, much remains to be done from the standpoint of supplementary legislation and implementing regulations, including further wrestling with the economic necessity, if not

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87. Law on Leasing, *supra* note 3.

88. *Id.* art. 5.

89. *Id.* art. 3.

90. *Id.*

91. *Id.* art. 9(1).

92. *Id.* arts. 7-8, 10, 12-13, 15.

the concept, of private property. Furthermore, a practice of dealing with the rights contained in the new legislation will have to accumulate among Soviet business people representing enterprises and Soviet and Western lawyers.



*APPENDIX*

*I. Extracts from The "Law of the Union of Soviet Socialist Republics on the Institution of the Position of President of the Union of Soviet Socialist Republics and the Introduction of Changes and Additions to the Constitution (Fundamental Law) of the Union of Soviet Socialist Republics":*

With the objective of ensuring the further development of the fundamental political and economic changes occurring in the country, the strengthening of the constitutional system and the rights, freedoms and protection of citizens and improved coordination among the USSR's supreme bodies of State power and management, the USSR Congress of Peoples' Deputies resolves:

...

II. To make the following changes and additions to the Constitution (Fundamental Law) of the USSR:

1. To delete from the preamble the words "grew the leading role of the Communist Party — the vanguard of the people".

2. To implement the following changes in Articles 6, 7, 10, 11, 12, 13 and 51:

Article 6. The Communist Party of the Soviet Union, other political parties as well as unions, youth and other social organizations and mass movements shall participate in the development of the policies of the Soviet government through their representatives in the soviets of peoples' deputies and in other forms.

Article 7. All political parties, social organizations and mass movements exercising the functions described in their programs and charters operate within the framework of the Soviet Constitution and laws.

The formation and operation of parties, organizations and movements with the objective of altering by force or undermining the security of the Soviet constitutional regime or the integrity of the Soviet State, or arousing social, nationalist or religious unrest is prohibited.

Article 10. The economic system of the Soviet Union shall

develop on the basis of ownership by Soviet citizens, as well as collective and State ownership.

The government will create the necessary conditions for the development of diverse forms of ownership and will ensure their equal protection.

Land, subterranean resources, water resources, and plant and animal life in their natural environment are the inalienable property of the people inhabiting a given territory, shall be administered under the jurisdiction of the soviets of peoples' deputies and will be allotted to citizens, enterprises, institutions and organizations for their use.

Article 11. The property of the Soviet citizen is his personal property and may be used to satisfy his material and spiritual needs and to conduct independent business or other activities not prohibited by law.

Property of a Soviet citizen may include any property for consumption or production acquired with income from labor or by other legal means, with the exception of property the acquisition of which by citizens is prohibited.

Citizens may hold land for lifetime heritable tenure and use for the conduct of agriculture and personal farming as well as for other purposes as provided by law.

The right to inheritance of a citizen's property is acknowledged and protected by law.

Article 12. Collective property is the property of lease enterprises, collective enterprises, cooperatives, joint stock companies, business organizations and other associations. Collective property is created through the transformation, as provided by law, of State property, and through the voluntary contribution of property of citizens and enterprises.

Article 13. State property consists of all-Union property, property of the Union and Autonomous Republics, property of the autonomous oblasts and okrugs, krays, and other administrative-territorial units (communal property).

Article 51. Citizens of the USSR have the right to form political parties and social organizations and to participate in mass movements which promote the development of political activity and independence and satisfy a variety of interests.

*II. Extracts from The "Resolution of the Supreme Soviet of the Union of Soviet Socialist Republics on the Entry into Force of the Law on Property in the Union of Soviet Socialist Republics":*

**SECTION I. GENERAL PROVISIONS**

**Article 1. The Right to Ownership.**

1. The right to ownership in the USSR is recognized and protected by law.

2. An owner owns, uses and disposes of its property at its own discretion.

An owner has the right to perform any actions not prohibited by law in connection with its property. It may use its property in connection with any economic or other activity not prohibited by law.

3. An owner may be obligated to allow limited use of its property by other persons, in the instances, according to the terms and within the limits provided by law.

4. In connection with the exercise of its ownership rights, an owner may enter into contracts with citizens regarding the use of their labor in the instances and within the limits provided by the laws of the USSR and its Union and Autonomous Republics.

Regardless of the form of property providing the basis for the employment of a citizen, such citizen shall be provided with the compensation, working conditions and other socio-economic guarantees provided for in current legislation.

5. The exercise of ownership rights shall not cause damage to the environment or infringe upon the rights and legally protected interests of citizens, enterprises, institutions, organizations or the State.

6. The use of any form of ownership shall exclude the alienation of the worker from the means of production and the exploitation of one person by another.

**Article 2. Legislation on Ownership of the USSR and the Union and Autonomous Republics.**

1. In conjunction with the Constitution of the USSR, this law establishes the fundamental rules of ownership, which will govern on the entire territory of the USSR.

2. Ownership relations not provided for by this law will be

regulated by the laws of the USSR and the Union and Autonomous Republics issued in accordance with this law.

3. Particularities in connection with the exercise of ownership rights to historical and cultural monuments will be defined in special laws of the USSR and the Union and Autonomous Republics.

4. Relations in connection with the creation and use of inventions, discoveries, scientific work, literature, art and other types of intellectual property are regulated by special laws of the USSR and the Union and Autonomous Republics.

#### Article 3. Objects of Ownership Rights.

1. Ownership rights may be exercised over land, subterranean resources, water, plant and animal life, buildings, structures, equipment, objects of material and spiritual culture, money, securities and other property.

2. The results of the commercial use of property (production and revenues) belong to the owner of such property unless otherwise provided by law or contract.

#### Article 4. Subjects of Ownership Rights; Forms of Ownership.

1. Ownership in the USSR exists in the form of ownership by Soviet citizens, as well as collective and State ownership.

Ownership by foreign governments, international organizations, foreign legal entities and foreign individuals may exist in the USSR.

2. It is permissible to unite property belonging to citizens, legal entities and governments and to establish thereby mixed forms of ownership, including ownership by joint ventures with the participation of Soviet and foreign legal entities and citizens.

3. The laws of the Union and Autonomous Republics may establish other forms of ownership not addressed by this law.

4. Property may by right of common ownership (either joint or several) belong simultaneously to more than one person, regardless of the form of ownership.

5. The State creates the necessary conditions for the development of different forms of ownership and ensures their protection.

#### Article 5. Claims Against an Owner's Property.

1. The obligations of a legal entity may give rise to a claim

against any property belonging to it by right of ownership or in its complete economic or operational control, except as provided in Article 26 of this law.

An owner is not responsible for the obligations of legal entities it creates, and such entities are not responsible for the obligations of such owner, except in such cases as are provided for in the laws of the USSR and the Union and Autonomous Republics.

2. Citizens are responsible for their obligations to the extent of the property belonging to them by right of ownership.

A list of citizens' property items which are not subject to creditor claims shall be established by the laws of the Union and Autonomous Republics.

## SECTION II. OWNERSHIP BY CITIZENS OF THE USSR

Article 6. General Provisions Regarding the Property of Citizens.

1. The property of citizens consists of and increases by their work-related income from participation in social production, the results of their own economic activities, the revenues from investments in credit institutions, stocks and other securities and the acquisition of property by means of inheritance and other means permitted by law.

2. A citizen has the exclusive right to the use of his abilities for productive and creative labor.

A citizen exercises this right either independently or through a labor contract.

3. A citizen may, with the permission of the owner, invest money or other resources in an enterprise or other economic organization or in a farm or other labor partnership by which such citizen is contractually employed, and such citizen may share in the profits (revenue) of such enterprise (organization) or partnership in proportion to the size of such investment.

4. Citizens will receive land for lifetime heritable tenure for agricultural use or use as a personal supplemental plot, for gardening, construction and housing and for the satisfaction of other needs contemplated by law.

5. A citizen's right to inherit property is recognized and protected by law.

Article 7. Objects of Citizens' Ownership Rights.

1. Citizens may own residential homes, dachas, summer-houses, plants on a plot of land, means of transport, money, stocks and other securities, household objects and objects for personal use, means of production for the conduct of farming or other labor partnerships, work on a personal supplemental plot, gardening, commercial gardening, individual and other economic activity, output produced and revenues received, as well as other objects used for consumption or production.

2. A member of an apartment cooperative, housing construction cooperative, dacha cooperative, garage cooperative or other cooperative who has made his full contribution to an apartment, dacha, garage or other building or facility to which he has obtained user rights, has ownership rights with regard to such property.

A tenant who resides in government or public sector-funded housing and the members of his family have the right to purchase the apartment or house in question from its owner.

Following the acquisition of said property, the citizen has the right to make use of it as he desires — to sell, bequeath or lease or perform any other transactions with it that are not in violation of the law.

3. The laws of the USSR and the Union and Autonomous Republics may specify types of property which may not be owned by citizens. The composition and value of other property acquired by a citizen in return for work-related revenues, savings or through some other legal means will not be restricted.

#### Article 8. Ownership by Labor Partnerships.

1. Members of a family and other persons who jointly operate a labor partnership may own a workshop or other small enterprise engaged in the area of general consumer services, trade, public food provision and other economic activity, residential or commercial buildings, machines, equipment, means of transport, raw materials, other materials and other property necessary for independent economic activity.

2. The property of a labor partnership, including its finished production and revenues, is the joint property of the family members and other persons who jointly operate such partnership, unless provided otherwise by contract.

**Article 9. Ownership by Farms and in Connection with Individually-Owned Supplemental Plots.**

1. A farm may own residential or commercial buildings, plants growing on a plot of land, livestock used for food production and work, poultry, agricultural technology and equipment, means of transport and other equipment necessary for the independent conduct of agricultural production and the processing and sale of output.

The output produced and revenues received are the property of the farm and may be used by it in its discretion.

2. The property of a farm is jointly owned by its members, unless otherwise determined by the laws of the Union and Autonomous Republics.

3. The rules of this section apply equally to supplemental plots of land farmed by private citizens

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**SECTION V. OWNERSHIP BY JOINT VENTURES,  
FOREIGN CITIZENS, FOREIGN ORGANIZATIONS  
AND FOREIGN STATES**

**Article 27. Ownership by Joint Ventures.**

Joint ventures with the participation of Soviet legal entities and foreign legal entities and citizens may be established on Soviet territory in the form of joint stock companies, commercial associations and partnerships and may own such property as is necessary for the conduct of the activities contemplated by their foundation documents.

**Article 28. Ownership by Foreign Citizens.**

The provisions of this law applying to the property of Soviet citizens apply equally to the property of foreign citizens that is located in the USSR. The provisions applying to the property of farms and other labor organizations apply to property owned by foreign citizens permanently residing in the USSR.

**Article 29. Ownership by Foreign Legal Entities.**

Foreign legal entities have the right to own industrial and other enterprises, buildings and installations and other property on the territory of the USSR in connection with their economic and other activities, in accordance with the terms and procedures prescribed by the laws of the USSR.

**Article 30. Property of Foreign States and International Organizations.**

Foreign states and international organizations have the right to own such property on the territory of the USSR as is necessary for the conduct of diplomatic, consular and other international affairs, in accordance with the terms and procedures prescribed by international treaties and by the laws of the USSR and the Union Republics.

**SECTION VI. GUARANTEES AND PROTECTION OF OWNERSHIP RIGHTS**

**Article 31. Guarantees of Ownership Rights.**

1. The State guarantees the stability of property relations established in accordance with this law.

2. In the event of adoption by the USSR or a Union or Autonomous Republic of any law terminating a right of ownership, the losses incurred by the owner as a result of such adoption will, in accordance with a court decision, be reimbursed to the owner to their full extent by the USSR or the corresponding Union or Autonomous Republic.

3. The State by law provides equal conditions for the protection of ownership rights for citizens, organizations and other owners.

**Article 32. Protection of Ownership Rights.**

1. An owner has the right to demand the return of its property from the illegal possession by another party in accordance with the civil legislation of the USSR and the Union and Autonomous Republics.

2. An owner may demand that any infringements upon its rights be remedied, even if such infringements were not connected with a deprivation of possession.

3. The protection of ownership rights is conducted through the courts, through State arbitration or by arbitration tribunal.

4. The rights embodied in these Articles are accorded equally to a person who, though not an owner, is in possession of property in accordance with a right of complete economic control, operational control, life-time heritable possession or some other basis provided by law or contract. Such person in



addition has the right to the protection of his possession against the owner.

**Article 33. Protection of Owner's Interests if Its Rights are Legally Terminated.**

1. Termination of ownership rights in connection with a decision to take the site upon which the owner's house, other construction, building or plants are located, or another decision by a government body not directly involving condemnation of the owner's property is permitted only to the extent and in the manner specified in the laws of the USSR and the Union and Autonomous Republics with compensation to the owner to the full extent of its loss attributable to the termination of ownership rights.

If the owner disagrees, a decision entailing termination of ownership rights cannot be implemented before the disagreement has been resolved by a court, a state arbitration panel or arbitration tribunal. The examination of such dispute will include a decision of all questions regarding compensation of the owner for losses incurred.

2. Any taking by the State of property belonging to an owner is permitted only through the implementation of a proceeding against such property in connection with the obligations of such owner, in accordance with the terms and procedures provided by the laws of the USSR and the Union and Autonomous Republics and in connection with requisitions and confiscations.

In the event of natural disasters, accidents, epidemics, epizootics and other extraordinary circumstances, property may, by decision of government authorities, be taken from its owner in the interest of society in accordance with the terms and procedures established by the laws of the USSR and the Union and Autonomous Republics with compensation to the owner for the value of the property (requisition).

In the instances provided by the laws of the USSR and the Union and Autonomous Republics, property may be taken from its owner by decision of a court, State arbitration board or other competent state body (official) as damages for the commission of a crime or other unlawful activity (confiscation).

**Article 34. Invalidity of Laws Violating the Rights of Owners.**

If the rights of an owner and other persons with rights to possession, use and disposition of property belonging to them are violated as the result of the promulgation of an unlawful act of a body of State management or local government, such act will be invalidated in a proceeding brought by the owner or other person whose rights have been violated.

Losses suffered by citizens, organizations and other persons as the result of the promulgation of such an act will be compensated in full from funds of the corresponding government or management body.

*III. Extracts from The "Fundamental of Legislation of the Union of Soviet Socialist Republics and the Union Republics on Land":*

SECTION I. GENERAL PROVISIONS

Article 6. Use of Land.

Land shall be granted for temporary or permanent use:

— to citizens of the USSR for the purposes described in Articles 21 and 22 hereof;

— to industrial, transport and other non-agricultural State, cooperative and social enterprises, institutions and organizations;

— for defense requirements to organizations described in Article 31 hereof;

— to religious organizations; and

— to joint ventures and international associations and organizations with the participation of Soviet and foreign legal entities.

The term for the temporary use of land shall be determined by the laws of the Union and Autonomous Republics.

Land shall be granted to additional organizations or entities for their use pursuant to USSR, Union Republic and Autonomous Republic legislation.

Article 7. Leasing of Land.

Land may be leased for temporary use to citizens of the USSR, collective and state farms and to other State, cooperative and social enterprises, institutions and organizations, to joint ventures, international associations and organizations

with the participation of Soviet and foreign legal entities and to foreign states or international organizations, as well as to foreign legal entities and citizens.

The lessors of the land shall be the applicable soviets of peoples' deputies.

The terms of the lease relationship shall be determined by agreement between the parties as set forth in the lease agreement. The lessee shall have a right of first refusal to renew the lease agreement upon its expiration.

The parties to a lease agreement covering agricultural land may agree to transfer the land to the lessee for tenure.

State and collective farms and other State and cooperative agricultural enterprises may assign land to individual workers or lease collectives in connection with internal land management.

The leasing of land is regulated by this law, the Fundamental legislation of the Soviet Union and Union Republics on leasing and the legislation of the Union and Autonomous Republics.

#### Article 8. Granting of Land.

The granting of land for tenure and use shall be conducted on the basis of an allotment.

Land that is currently in use or under tenure will be allotted to another landholder or user only following a taking of such land in accordance with the procedures set forth in Articles 11 and 24 hereof.

Land suitable for agriculture shall be granted preferentially for agricultural use.

The right to tenure and permanent use of land is documented by state deed.

The form of the State deed and the procedure for its issuance and registration shall be determined by Union Republic legislation. The form and registration procedure for land lease agreements and other agreements for the temporary use of land shall be determined by Union and Autonomous Republic legislation.

#### Article 9. Termination of the Right of Tenure and Use of Land.

The right of tenure and use of all or part of a plot of land

will be terminated by the soviet of peoples' deputies in the case of:

1. Voluntary renunciation of the plot;
2. Expiration of the term for which the plot was granted;
3. Termination of activities by the enterprise, institution, organization or farm;
4. Use of the plot for purposes other than those designated;
5. Termination of the labor relationship in connection with which the plot was granted, unless provided otherwise by USSR, Union Republic or Autonomous Republic legislation;
6. Irrational use of the plot, demonstrated in the case of agricultural land by sub-normal yields (based on land survey valuation);
7. Use of the plot in a manner that results in the reduction of soil fertility, chemical or radioactive pollution or the impairment of its ecological condition;
8. Regular non-payment of land tax for periods to be determined by Union and Autonomous Republic legislation, or of land rent for a period to be established in the lease agreement;
9. Non-use of the plot for one year in the case of land designated for agricultural use and for two years in the case of land designated for non-agricultural production; and
10. Taking of the plot in accordance with the procedures set forth herein.

Points 6 and 9 above do not apply to citizens holding tenure over land for agricultural purposes for the first three years of such tenure.

The right to use leased land will similarly be terminated in the event of a breach of the lease agreement pursuant to the fundamental legislation of the USSR and the Union Republics on leasing.

Union and Autonomous Republic legislation may provide for other causes of termination of the rights to hold tenure, use or rent land.

#### Article 10. Transfer of Rights to Tenure and Use of Land.

Rights to tenure and use of land are transferred automatically with the rights of ownership to buildings and structures

located thereon, in accordance with the procedure and terms set forth in Union and Autonomous Republic legislation.

**Article 11. Taking of Land.**

The applicable soviet of peoples' deputies may take land for government or social needs with the approval of the landholder or user in accordance with the procedures established by USSR, Union Republic or Autonomous Republic legislation.

The taking of agricultural land for non-agricultural uses is allowed only in exceptional cases in accordance with Union and Autonomous Republic legislation.

If the landholder or user refuses to give its approval to a taking, the decision of the soviet of peoples' deputies may be appealed to a court.

No taking is permitted of particularly valuable productive land, designated in accordance with a land survey for the given region, or of land upon which particularly valuable natural or cultural-historic objects are located. A description of such land shall be provided by Union and Autonomous Republic legislation.

A taking of land in suburban and green belt areas, test sites of scientific research institutions and educational establishments or forests of the first category for State or social needs is permitted only under exceptional circumstances in accordance with Union and Autonomous Republic legislation.

Enterprises, institutions and organizations interested in taking certain plots of land must, before initiating their own planning stage, reach a preliminary agreement with the landholder and user as well as with the local soviet of peoples' deputies regarding the location of the project, the approximate size of the site and the conditions for its allocation with a view towards ensuring the comprehensive development of the region. No financing of design work will be permitted prior to such a preliminary understanding.

The taking of land from state and collective farms or other agricultural enterprises and its transfer to citizens of the USSR and agricultural cooperatives is accomplished by regional or city soviets of peoples' deputies in accordance with this law and with Union and Autonomous Republic legislation.