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# Legal Forms of Doing Business in Russia

## **Cover Page Footnote**

International Law; Commercial Law; Law

# Legal Forms of Doing Business in Russia

*Peter B. Maggs*†

## I. Introduction

As Russia moves toward a market economy, the choice of business forms becomes important for three groups: those privatizing state enterprises, those forming new businesses, and those investing from abroad. An entrepreneur starting a business in the United States must immediately make numerous decisions about the form of business. Should it be a sole proprietorship, a partnership, a limited partnership, or a corporation? What provisions should it have in its partnership agreement or corporate charter? Should it qualify for tax treatment as an "S Corporation"? Should it qualify to sell stock to the general public? Should it qualify for listing on the New York Stock Exchange? Should it qualify for antitrust exemption as an export association?

Market-oriented economists would suggest that Russia should allow a broad, free choice of business forms, on the assumption that those actually engaged in business and the markets know better than government bureaucrats what form is best for what type of business activity. Government can reduce transaction costs by predefining the legal attributes of various standard forms of doing business and by minimizing formalities for establishing businesses. Then entrepreneurs can choose a business form rather than having to pay lawyers to create one. Additionally, public interest requires some limits on the freedom of choice among business forms. These limits serve to protect consumers against securities fraud and monopolistic activity. To the dismay of economists, tax laws often also limit the freedom by penalizing certain forms of corporate organization.<sup>1</sup>

Russian law has moved remarkably fast toward meeting these three ideals: (1) a variety of standard, legally defined, easily available business forms; (2) free choice among them; and (3) equal tax treatment for the different forms.

During the nineteenth and early twentieth century, Russia fol-

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<sup>1</sup> Charles E. McLure, Jr., *Where Tax Reform Went Astray*, 31 VILL. L. REV. 1619, 1624-25 (1986).

lowed the same progression as Western Europe and the United States in the development of corporation law. It moved from a system of approving company formation by special acts of the government to a system of registration of corporate charters meeting legislative standards. However, the system suffered from bureaucracy and corruption. It imposed substantial transaction costs on would-be entrepreneurs.<sup>2</sup>

During the half-century in which the Soviet planned economy was dominant in Russia—from the mid-1930s through the mid-1980s, the state allowed only a limited number of forms of enterprise organization. Central authorities rather than the enterprises themselves decided on changes in form. Stalin and his successors generally made uniform changes across a large part of the economy. For instance, during the 1920s, farming was conducted mainly by private family farms. During the 1930s, Stalin decided to force the vast majority of peasants into enterprises that in form were cooperatives, but in fact were Party and state-run estates with peasant serfs. Under Brezhnev the leadership grouped many state enterprises into larger enterprises called amalgamations (*ob'edineniia*).<sup>3</sup>

Gorbachev introduced a number of new forms of enterprise organization, but departed from past practice by allowing widespread voluntary use (and non-use) of these forms. He made the cooperative form into a major instrument for private business activity. He created the joint enterprise form as a vehicle for foreign investment. He reinstated joint-stock and limited liability companies as forms of business for Soviet and foreign entrepreneurs. He also made active use of these new forms for his own purposes. As the power of the Union of Soviet Socialist Republics (USSR) waned, the republics enacted legislation of their own on forms of doing business, and it often conflicted with USSR legislation.

With the breakup of the USSR, these republican forms (and a few USSR forms revalidated by republic legislation) are now the main forms available for new businesses, although most enterprises now operating were formed under USSR law. The enterprise laws of the new countries that were Soviet republics are increasingly different from one another. This article will be limited to Russian law, which is economically the most important and also is the best documented. Today governmental entities, private individuals, and foreign investors have a wide choice of forms of doing business in Russia. For all three groups, legal categorization in terms of ownership, organizational structure, tax treatment, and regulatory treat-

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<sup>2</sup> For a discussion of the development of the corporate form in Russia, see THOMAS C. OWEN, *THE CORPORATION UNDER RUSSIAN LAW, 1800-1917* (1991).

<sup>3</sup> OLIMPIAD S. IOFFE & PETER B. MAGGS, *THE SOVIET ECONOMIC SYSTEM: A LEGAL ANALYSIS* 102 (1987). See discussion *infra* part VI(A).

ment is important. The discussion below will examine each of these dimensions of categorization in turn.

## II. Ideological and Constitutional Principles of Ownership

Between the 1917 Revolution and 1990, ownership was the most important factor in determining the ideological and legal position of an enterprise. Communist theory and legal practice favored state ownership, tolerated cooperative ownership, and restricted private ownership. This approach was symbolized by the order in which the Constitution and other laws listed forms of ownership, always with state ownership first. Theorists even saw a progressive trend toward bringing all means of production under state ownership, as the "highest form" of ownership.

In the late 1980s, the direction of ideology changed, downgrading the importance of state ownership. By 1990, the law had caught up, proclaiming the equality of all forms of ownership. Starting in the late 1980s, many private citizens and a few foreign investors created new enterprises using the newly available business forms. However, when the Soviet Union dissolved at the end of 1991, the vast majority of resources still were managed by traditional forms—state enterprises, state farms, and collective farms. During 1992 and, barring political reverses, continuing steadily thereafter, the government of Russia plans a steady campaign of privatization, which will result in the transformation of state enterprises and collective farms into joint-stock companies, partnerships, cooperatives, and sole proprietorships.<sup>4</sup>

In 1990, the USSR Congress of People's Deputies radically amended the provisions of the Soviet Constitution on ownership.<sup>5</sup> These amendments,<sup>6</sup> the accompanying law on ownership,<sup>7</sup> and De-

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<sup>4</sup> *Press Conference on Privatization in the RF*, Federal News Service, Aug. 18, 1992, available in LEXIS, Nexis Library, Wires File; *Decree No. 322 of the President of the Russian Federation on Additional Measures on Implementing the Guidelines of the Program of Privatization of State and Municipal Enterprises in the Russian Federation in 1992*, Federal News Service, Apr. 14, 1992, available in LEXIS, Nexis Library, Wires File; *Polozhenie o kommertsializatsii gosudarstvennykh predpriatii s odnovremennom preobrazovaniem v aktsionernye obshchestva otkrytogo tipa* [Statute on the Commercialization of State Enterprises with their Simultaneous Transformation into Open Joint Stock Companies], Edict of the President of the Russian Federation of July 1, 1992, ROSSIISKAIA GAZETA, July 7, 1992; *O merakh po realizatsii Ukaza Prezidenta Rossiiskoi Federatsii ot 1 iul'ia 1992 goda, No. 721* [On Measures for the Implementation of the Edict of the President of the Russian Federation of July 1, 1992], 33 EKONOMIKA I ZHIZN' [EKON. I ZH.] (1992).

<sup>5</sup> An article written just before these amendments discusses the issues. Peter B. Maggs, *Constitutional Implications of Changes of Property Rights in the USSR*, 23 CORNELL INT'L L.J. 363 (1990).

<sup>6</sup> *Ob uchrezhdenii posta Prezidenta SSSR i vnesenii izmenenii i dopolnenii v Konstitutsiiu (Osnovnoi Zakon) SSSR* [On Creating the Post of President of the USSR and Making Amendments and Additions to the Constitution (Basic Law) of the USSR], *Vedomosti SSSR*, Issue No. 12, Item No. 189 (1990) [hereinafter *On Creating the Post of President*].

<sup>7</sup> *O sobstvennosti v SSSR* [On Ownership in the USSR], *Vedomosti SSSR*, Issue No.

ember 1990 legislation on investment<sup>8</sup> largely removed the prior legal rules favoring state ownership and disfavoring private ownership.<sup>9</sup> The Russian Republic enacted even more radical Constitutional amendments and legislation on the same subjects.<sup>10</sup> The overall effect of this legislation was to remove both the ideological and the Constitutional barriers to the adoption of new business forms.

### III. Structure

Russia has indicated that for the time being it will continue to apply legislation of the former USSR to the extent that this legislation does not contradict Russia's own laws.<sup>11</sup> This intention means two things. First, the charters of enterprises created under the provisions of USSR legislation are still valid, except when rechartering is specifically required by law. Second, USSR law is being applied to fill gaps in Russian legislation. However, in the course of the ongoing privatization campaign, enterprises created under the old USSR system are being converted into businesses chartered under Russian Federation legislation.<sup>12</sup> New Russian Federation legislation is rapidly filling the gaps. Therefore, USSR law should "wither away" in the relatively near future.

The Russian Republic law of December 1990 on Enterprises and Entrepreneurial Activity lists many of the basic types of enterprise.<sup>13</sup> Its categorization is more practical and much less imbued with Communist ideology that the now obsolete USSR Law on Enterprises of

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11, Item No. 164 (1990); O vvedenii v deistvie Zakona SSSR "O sobstvennosti v SSSR" [On Putting into Effect the USSR Law "On Ownership in the USSR"], *Vedomosti SSSR*, Issue No. 11, Item No. 165 (1990). Cf. *Zakon SSSR o sobstvennosti v SSSR* [USSR Law on Ownership in the USSR], *IZVESTIA*, Nov. 18, 1989, at 1 (the 1989 draft of the "On Ownership in the USSR" statute).

<sup>8</sup> *Osnovy zakonodatel'stva ob investitsionnoi deiatel'nosti v SSSR*, [Fundamental Principles of Legislation on Investment Activity in the USSR], *Vedomosti SSSR*, Issue No. 51, Item No. 1110 (1990) [hereinafter *Fundamental Principles*].

<sup>9</sup> John N. Hazard, *Gorbachev's Attack on Stalin's Etatisation of Ownership*, 28 *COLUM. J. TRANSNAT'L L.* 207 (1990).

<sup>10</sup> Ob izmeneniiakh i dopolneniiakh Konstitutsii (Osnovnogo Zakona) RSFSR [On Amendments and Additions to the Constitution (Fundamental Law) of the RSFSR], *Vedomosti RSFSR*, Issue No. 29, Item No. 395 (1990); O predpriatiiakh i predprinimatel'skoi deiatel'nosti [On Enterprises and Entrepreneurial Activity], *Vedomosti RSFSR*, Issue No. 30, Item No. 418 (1990) [hereinafter *On Enterprises and Entrepreneurial Activity*]; O poriadke vvedeniia v deistvie Zakona RSFSR "O predpriatiiakh i predprinimatel'skoi deiatel'nosti" [On the Procedure for Putting in Effect the RSFSR Law "On Enterprises and Entrepreneurial Activity"], *Vedomosti RSFSR*, Issue No. 30, Item No. 419 (1990); O sobstvennosti v RSFSR [On Property in the RSFSR], *Vedomosti RSFSR*, Issue No. 30, Item No. 416 (1990).

<sup>11</sup> *Law on Closed Territories Adopted*, World Service, July 17, 1992, available in LEXIS, Nexis Library, bbcswb File; *Interview with State Counsellor of the RSFSR on Legal Policy, Vice-Chairman of the Russian Government Sergei Shakhrai*, Federal News Service, Dec. 17, 1991, available in LEXIS, Nexis Library, Wires File.

<sup>12</sup> See sources cited *supra* note 4.

<sup>13</sup> See sources cited *supra* note 10.

June 1990.<sup>14</sup> The Russian law lists the following "organizational-legal" forms of enterprise: the state enterprise; the municipal enterprise; the individual (or family) private enterprise; the full partnership; the mixed (limited) partnership; the closed joint-stock company; the open joint-stock company; the union of enterprises; the branches and representative offices of enterprises; and the enterprise created on the basis of leasing and buyout of property by the labor collective. In addition to these types of institutions, older types of enterprises (authorized under USSR law but not Russian law) are still in operation. These include: state farms, collective farms, joint enterprises, cooperatives, and small business enterprises.<sup>15</sup> Some new cooperatives are being formed out of former state and collective farms.

#### A. *The State Enterprise*

Neither private individuals nor collective groups can found state enterprises. Only state organizations of the Russian Federation, and its constituent republics, regions, and provinces can found and own state enterprises.<sup>16</sup> Russia is in the middle of a great debate over the respective ownership rights of the Russian Federation, the constituent republics and regions, and the local governments. Regardless of which governmental level owns a state enterprise, these enterprises are the same in legal form.<sup>17</sup> A state enterprise is a juridical person separate from the state organization that created it. The organization that created it is not responsible for its debts.

Great fanfare and widespread public discussion accompanied the adoption of the 1987 USSR Law on the State Enterprise, which was to be the cornerstone of *perestroika*.<sup>18</sup> The law proved to be a failure. While it promised to free state enterprises from petty tutelage by ministries and other superior agencies, it did not do so in practice. Its scheme of dividing profits between the enterprise and

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<sup>14</sup> O predpriatiakh v SSSR [On Enterprises in the USSR], Vedomosti SSSR, Issue No. 25, Item No. 460 (1990) [hereinafter On Enterprises in the USSR]. Article 2 of this law divides the legal forms of enterprises first by category of ownership, then by type of enterprise. It lists two types of enterprise based on "individual ownership": the individual enterprise and the family enterprise. Article 2 further identifies six types of enterprise based on "collective ownership": the collective enterprise; the production cooperative; the enterprise belonging to a cooperative; the enterprise created in the form of a joint-stock company; the enterprise created in the form of some other economic company or partnership; and the enterprise belonging to such a company or partnership. Finally, Article 2 lists four types of enterprise based on "state ownership": the state union enterprise; the state republican enterprise of a union republic; the state enterprise of an autonomous republic, autonomous region, or autonomous district; and the state municipal enterprise. *Id.* art. 2.

<sup>15</sup> IOFFE & MAGGS, *supra* note 3, at 59-100.

<sup>16</sup> On Enterprises and Entrepreneurial Activity, *supra* note 10, art. 6.

<sup>17</sup> O gosudarstvennom predpriatii (Ob'edinenii) [On the State Enterprise (and Amalgamation)], Vedomosti SSSR, Issue No. 26, Item No. 385 (1987).

<sup>18</sup> *Id.*

the government led to a sharp revenue shortfall, with resulting serious inflation. In 1989, there were some technical amendments,<sup>19</sup> but more importantly, restrictive legislation in 1989 and excess profits tax legislation in 1990, virtually removed the enterprises' vaunted guaranteed profit incentives. Another highly propagandized feature of the state enterprise statute, the role of the employee collective in the selection of management, fell victim to the 1990 USSR Law on Enterprises, which made the owner the ultimate determinant of management.<sup>20</sup>

While the Russian government has announced a massive program of privatization,<sup>21</sup> in 1992 the vast majority of assets of the economy still remained in the hands of state enterprises. The state enterprise form is still an active legal form, even though the number of state enterprises privatized each month greatly exceeds the number being formed.

### B. *The Municipal Enterprise*

A municipal enterprise has the same characteristics as a state enterprise, except that it is founded by a local government.<sup>22</sup>

### C. *The Individual (or Family) Private Enterprise*

Although the Soviet Union allowed individually owned businesses to operate starting in the 1920s, it severely restricted them until 1986. Article 17 of the 1977 Brezhnev Constitution provided, "in the USSR individual labour activity shall be permitted in accordance with the law in the sphere of handicrafts, agriculture, domestic servicing of the populace, and also other forms of activity based exclusively on the personal labour of citizens and members of their families."<sup>23</sup> In 1986 and 1987, soon after Gorbachev took office,

<sup>19</sup> O vnesenii izmenenii i dopolnenii v Zakon SSSR "O gosudarstvennom predpriatii (Ob'edinenii)" [On Making Amendments and Additions to the USSR Law "On the State Enterprise (and Amalgamation)"], *Vedomosti SSSR*, Issue No. 9, Item No. 214 (1989).

<sup>20</sup> On Enterprises in the USSR, *supra* note 14.

<sup>21</sup> Postanovlenie Verkhovnogo Soveta RSFSR ob utverzhdenii Polozheniia o Rossiiskom fonde federal'nogo imushchestva [Resolution of the Supreme Soviet of the RSFSR on Enactment of the Statute on the Russian Fund of Federal Property], *Vedomosti RSFSR*, Issue No. 27, Item No. 929 (1991); Zakon RSFSR o privatizatsii gosudarstvennykh i munitsipal'nykh predpriatii v RSFSR [Law of the RSFSR on Privatization of State and Municipal Enterprises in the RSFSR], *Vedomosti RSFSR*, Issue No. 27, Item No. 927 (1991); Zakon RSFSR ob imennykh privatizatsionnykh schetakh i vkladakh v RSFSR [Law of the RSFSR on Personal Privatization Accounts and Deposits in the RSFSR], *Vedomosti RSFSR*, Issue No. 27, Item No. 925 (1991); Postanovlenie Verkhovnogo Soveta RSFSR o merakh po podgotovke protessov privatizatsii gosudarstvennogo i munitsipal'nogo imushchestva na territorii RSFSR [Resolution of the Supreme Soviet of the RSFSR on Measures for the Preparation of Processes of Privatization of State and Municipal Property on the Territory of the RSFSR], *Vedomosti RSFSR*, Issue No. 18, Item No. 569 (1991).

<sup>22</sup> On Enterprises and Entrepreneurial Activity, *supra* note 10, art. 7.

<sup>23</sup> KONST. SSSR [CONSTITUTION] (Union of Soviet Socialist Republics), art. 17, *translated in* BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM 7 (W.E. Butler trans. & ed., 1991).



new legislation broadened the opportunities for private citizens to engage legally in small private businesses.<sup>24</sup> During 1986 and 1987, the state also conducted a contradictory policy, campaigning against "Non-Labor Income" at the same time as it was claiming to encourage private business.<sup>25</sup>

Family enterprises existed in various forms throughout Soviet history. During the Stalin through Brezhnev eras the most important form was the "collective farm household," which managed the plots allocated for private farming as family enterprises.<sup>26</sup> As a rare exception, the Stalin Constitution allowed private farming. The USSR Ownership Law enacted the concept of the "peasant farm" (*krest'ianskoe khoziaistvo*).<sup>27</sup> The peasant farm was allowed to have livestock, equipment, crops, and supplies. In addition, the USSR laws on ownership and on land provided that a peasant could hold land in "lifetime inheritable possession."

This idea of tying a family to the land appeared to be a legacy of the Tsarist institution of serfdom. Participants in a peasant farm

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<sup>24</sup> O poriadke opredeleniia vidov individual'noi trudovoi deiatel'nosti, na kotorye grazhdane mogut priobretat' patenty, i razmerov ezhegodnoi platy za patent [On the Procedure for Determining the Types of Individual Labor Activity for which Citizens may Receive Licenses and the Amounts of Annual Payments for a License], SP RSFSR, Issue No. 5, Item No. 72 (1991); O stavkakh arendnoi platy za nezhiye pomeshcheniia, predostavliaemye grazhdanam, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu [On the Rates of Rental Payments for Non-Residential Premises Made Available to Citizens Engaged in Individual Labor Activity], SP RSFSR, Issue No. 7, Item No. 53 (1987); O merakh po uluchsheniui organizatsii prodazhi tovarov, proizvodimykh kooperativami i grazhdanami, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu [On Measures for Improving the Organization of Sale of Goods Produced by Cooperatives and by Citizens Engaged in Individual Labor Activity], SP SSSR, Issue No. 45, Item No. 152 (1987); Ob individual'noi trudovoi deiatel'nosti [On Individual Labor Activity], Vedomosti SSSR, Issue No. 47, Item No. 964 (1986); *Rekomendatsii o primeneniui nekotorykh polozenii Zakona SSSR "Ob individual'noi trudovoi deiatel'nosti"* [Recommendations on the Application of Certain Provisions of the USSR Law "On Individual Labor Activity"], 7 BIULLETEN' NORMATIVNYKH AKTOV 29 (1987); *Pis'mo Goskomtruda SSSR, Ministerstva finansov SSSR i Ministerstva iustitsii SSSR ot 10 apreliia 1987 g. No. 52-IG* [Letter of the USSR State Committee on Labor and Social Problems, the USSR Ministry of Finance, and the USSR Ministry of Justice of April 10, 1987, No. 52-IG], 7 BIULLETEN' NORMATIVNYKH AKTOV 35 (1987); *Poriadok obespecheniia grazhdan, zanimaiushchikh-sia individual'noi trudovoi deiatel'nost'iu, produktsei proizvodstvenno-tekhnicheskogo naznacheniia i priobreteniia etimi grazhdanami izlishnykh i neispol'zuemykh material'nykh tsnnostei i otkhodov proizvodstva i potrebeniia u predpriatii i organizatsii* [Procedure for Supplying Citizens Engaging in Individual Labor Activity With Goods for Production and Technical Purposes, and for the Obtaining by these Citizens of Excess and Unused Items of Value and Production and Use Waste at Enterprises and Organizations], 6 BIULLETEN' NORMATIVNYKH AKTOV 38 (1987); *O poriadke prodazhi grazhdanam, zanimaiushchimsia individual'noi trudovoi deiatel'nost'iu, tovarov v gosudarstvennoi i kooperativnoi roznichnoi togovoi seti i realizatsii izgotovlennykh imi izdelii* [On the Procedure for Sale to Citizens Engaged in Individual Labor Activity of Goods in the State and Cooperative Retail Trade Network and the Sale of Goods Made by Them], 6 BIULLETEN' NORMATIVNYKH AKTOV 41 (1987); Stanislaw Pomorski, *Notes on the 1986 Law on Individual Labor Activity*, in *THE IMPACT OF PERESTROIKA ON SOVIET LAW* (41 LAW IN EASTERN EUROPE) 143 (A.J. Schmidt ed., 1990).

<sup>25</sup> Olimpiad S. Ioffe, "Non-Labor Income" and Individual Labor Activity in the USSR, in *LAW AFTER REVOLUTION* 47 (William Butler et al. eds., 1988).

<sup>26</sup> Peter B. Maggs, *The Law of Farm-Farmer Relationships*, in *THE SOVIET RURAL COMMUNITY* 139-56 (James R. Millar ed., 1971).

<sup>27</sup> See sources cited *supra* note 7.

were to own its property jointly, but without defined shares, as in the traditional Russian peasant or collective-farm household. The 1986 Law on Individual Labor Activity authorized employment of family members by persons licensed to engage in such activity: "Individual labor activity may be conducted by citizens with the participation of members of the family (spouse, parents and other relatives and dependents who have reached the age of 16) living together with them."<sup>28</sup>

It was not until 1990 that the USSR legislature established a general right of private citizens to engage in business activity. In March 1990, the Congress of People's Deputies replaced the Brezhnev Constitution provisions with the following: "Ownership [of property] by a citizen of the USSR is his personal wealth and shall be used for satisfying his material and spiritual needs and for independent conduct of economic and other activity not forbidden by law."<sup>29</sup>

During the remainder of 1990, the government gradually removed limitations on business activity by private citizens. The Law on Ownership, which took effect on July 1, 1990, affirmed the general right of private citizens to engage in business.<sup>30</sup> The 1990 USSR Law on Enterprises, in provisions which took effect on January 1, 1991, treated citizens the same as organizations by giving them the right to found enterprises.<sup>31</sup> USSR legislation on "investment activity" provided that "[a]ll investors have equal rights in the conduct of investment activity."<sup>32</sup>

However, the situation was unclear as late as the start of 1991. The Law on Individual Labor Activity, legislation against earning "Non-Labor Income," and laws against private reselling for profit remained on the books. In its December 1990 legislation on enterprises, the Russian Republic created a category of "Individual (or Family) Enterprises" that enjoyed privileges on a par with other business enterprises.<sup>33</sup> Individual and family enterprises could have limited liability if their charters so provided: the law stated that "[t]he owner of an individual enterprise bears liability for the obligations of the enterprise within the limits defined by the charter of the enterprise."<sup>34</sup>

By the start of 1992, the Russian republic adopted legislation simplifying the procedure for obtaining permission to operate a sole proprietorship and began the repeal of legislation making retail

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<sup>28</sup> See sources cited *supra* note 24.

<sup>29</sup> On Creating the Post of President, *supra* note 6,

<sup>30</sup> See sources cited *supra* note 7.

<sup>31</sup> On Enterprises in the USSR, *supra* note 14.

<sup>32</sup> Fundamental Principles, *supra* note 8.

<sup>33</sup> On Enterprises and Entrepreneurial Activity, *supra* note 10, art. 8.

<sup>34</sup> *Id.*

trade activity by private individuals a criminal offense. Legislation adopted late in 1991 provided procedures for the speedy and inexpensive issuance of permits for sole proprietorships.<sup>35</sup> It provided that local authorities must issue a permit to a sole proprietorship within fifteen days of the filing of an application; that a permit could only be denied on the basis of specific legal prohibitions; and that the maximum fee for a permit would be equal to one month's minimum wage. While these provisions are liberal, it should be remembered that in the United States sole proprietorships are not required to have permission to start doing business, although United States law does require prompt declaration to tax and employee-protection authorities. Furthermore, these simplified procedures for obtaining permits do not, by their terms, apply to family enterprises.

Legislation providing criminal punishment for private trade activities died a natural death in early 1992, but it could be resurrected. In 1990, the USSR passed legislation increasing the penalties for private trade activity, but also making a key change in the elements of the offense.<sup>36</sup> Previously the law defined the offense as "purchase and resale of goods or other items with the purpose of profit."<sup>37</sup> The 1990 USSR law limited the offense to: "purchase of goods on which state retail prices are established in trade enterprises (or organizations) and also in other enterprises conducting retail trade to the public and their resale with the purpose of profit."<sup>38</sup> The Russian Republic promptly passed legislation adopting the USSR limitation.<sup>39</sup>

In late 1991 and early 1992, the Russian republic loosened state retail price setting for many goods.<sup>40</sup> Since the 1990 legislation lim-

<sup>35</sup> *O registratsionnom sbore s fizicheskikh lits, zanimaiushchikhsia predprinimatel'skoi deiatel'nost'iu, i poriadke ikh registratsii* [On the Registration Fee for Natural Persons Engaged in Entrepreneurial Activity and the Procedure for Their Registration], 8 EKON. I ZH. 16 (1992).

<sup>36</sup> *Ob usilenii otvetstvennosti za spekulatsiiu, nezakonnuu torgovuiu deiatel'nost' i za zloupotrebleniia v torgovle* [On Increasing Responsibility for Blackmarketeering, Illegal Trade Activity and Abuses in Trade], *Vedomosti SSSR*, Issue No. 45, Item No. 953 (1990) [hereinafter *On Increasing Responsibility*].

<sup>37</sup> Pomorski, *supra* note 23.

<sup>38</sup> *On Increasing Responsibility*, *supra* note 36.

<sup>39</sup> *O poriadke primeneniia Zakona RSFSR "O deistvii na territorii RSFSR Zakona SSSR ot 31 oktiabria 1990 goda "Ob usilenii otvetstvennosti za spekulatsiiu, nezakonnuu torgovuiu deiatel'nost' i za zloupotrebleniia v torgovle"* [On the Procedure for the Application of the RSFSR Law "On the Effect on the Territory of the RSFSR of the USSR Law of October 3, 1990, 'On Strengthening Responsibility for Reselling for Profit and Illegal Trade Activity'"], *Vedomosti RSFSR*, Issue No. 18, Item No. 568 (1991); *O deistvii na territorii RSFSR Zakona SSSR ot 31 oktiabria 1990 goda "Ob usilenii otvetstvennosti za spekulatsiiu, nezakonnuu torgovuiu deiatel'nost' i za zloupotrebleniia v torgovle"* [On the Effectiveness on the Territory of the RSFSR of the USSR Law of October 30, 1990, "On Strengthening Responsibility for Reselling for Profit and Illegal Trade Activity"], *Vedomosti RSFSR*, Issue No. 9, Item No. 204 (1991).

<sup>40</sup> *Russian Government—Resolution on Price Coefficients*, TASS, March 7, 1992, available in LEXIS, Nexis Library, currnt File; *Russian Government Adopts Resolution on New Prices*, TASS, Dec. 24, 1991, available in LEXIS, Nexis Library, currnt File.

ited the crime to resale of price-controlled goods, the effect of lifting price controls was to eliminate the possibility of applying criminal penalties for reselling. In December 1991, the Russian parliament repealed a related article of the Criminal Code, that provided criminal responsibility for "Private Enterprise Activity and Acting as a Commercial Middleman."<sup>41</sup> An early 1992 Presidential edict reaffirmed the legality of private trade activities and invalidated local administrative restrictions on such activities.<sup>42</sup> However, in a January 1992 interview the Minister of Justice surprisingly called for the retention of criminal liability for reselling for profit in the planned revision of the Russian Federation Criminal Code.<sup>43</sup>

The most important category of family business is the peasant (or farmer's) farm, which is governed by detailed special legislation.<sup>44</sup> Upon registration, the farm becomes a juridical person. Normally, the farm would receive land for farming under the ongoing land reform process. The farm, as a juridical person, owns the crops and the livestock grown on this land.

#### *D. Full Partnership*

The December 1991 Russian Law on Enterprises provides that any combination of individuals and legal persons may create full partnerships.<sup>45</sup> The partnership must be based upon a written contract, which must be submitted to the authorities in order to obtain a permit to begin operations. Because the Russian legislation on full partnerships is very sketchy (about 100 words in total), prudence would suggest having a very detailed partnership contract. A full partnership is not a legal person. Regardless of the terms of the contract, all partners are liable with all their property for the debts of the partnership.

#### *E. The Mixed (Limited) Partnership*

The December 1991 Russian Law on Enterprises provides for the creation of "mixed" (i.e., limited) partnerships as an alternative

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<sup>41</sup> Zakon o vnesenii izmenenii i dopolnenii v Ugolovnyi kodeks RSFSR, Ugolovno-protsessual'nyi kodeks RSFSR i Kodeks RSFSR ob administrativnykh pravonarusheniakh [Law on Making Amendments and Additions to the Criminal Code of the RSFSR, the Criminal Procedure Code of the RSFSR and the Code of the RSFSR on Administrative Violations], *Vedomosti RSFSR*, Issue, No. 52, Item No. 1867 (1991) [hereinafter Amendments and Additions to Criminal Code].

<sup>42</sup> *Decree of the President of the Russian Federation on Freedom of Trade*, Current Digest of the Post-Soviet Press, March 4, 1992, available in LEXIS, Europe Library, CDSP File.

<sup>43</sup> See Iurii Feofanov, *Glavnoe-uiti ot ideologii* [The Main Thing is to Get Away from Ideology], *IZVESTIA*, Jan. 6, 1992, p.3, translated in Current Digest of the Post-Soviet Press, Feb. 5, 1992, at 30, available in LEXIS, Europe Library, CDSP File.

<sup>44</sup> O krest'ianskom (fermerskom) khoziastve [On the Peasant (or Farmer's) Farm], *Vedomosti RSFSR*, Issue No. 26, Item No. 324 (1990).

<sup>45</sup> On Enterprises and Entrepreneurial Activity, *supra* note 10, art. 9.

to full partnerships.<sup>46</sup> The mixed partnership has full members (general partners) and investor-members (limited partners). A mixed partnership is a legal person. The liability of the limited partners is restricted to their investment. The very sketchy provisions of Russian law place no limits upon participation by limited partners in the management of the partnership.<sup>47</sup>

#### F. *The Joint-Stock Company*

A general joint company law was on the books in the Soviet Union from the 1920s until after 1960.<sup>48</sup> However, with the end of the New Economic Policy, the state liquidated the vast majority of joint-stock companies or converted them into state enterprises.<sup>49</sup> A few joint-stock companies remained in foreign trade and related areas, perhaps to provide an extra layer of insulation between the state and foreign claimants. During the late 1980s and in 1990, special legislative acts were also used to create individual joint-stock companies.<sup>50</sup> The Soviet authorities decreed the transfer of property rights in enterprises located in Estonia, Latvia, Lithuania to a newly created and Soviet-controlled joint-stock company, as part of the overall policy of countering the Baltic states' drive for independence from Soviet power.

In June 1990, the USSR Council of Ministers adopted general legislation authorizing the creation of joint-stock companies.<sup>51</sup> This legislation had many similarities to the 1927 joint-stock corporation law and the corporation laws of Western European countries, with such familiar features as common stock, preferred stock, and stockholders' meetings. Compared to United States law, the Soviet legislation was rather rigid in requiring stockholders' meeting consent for a wide variety of actions.<sup>52</sup> The most restrictive feature was a minimum capital requirement of 500,000 rubles (then \$833,333 at the official rate of exchange; perhaps \$50,000 at the black market rate). This requirement put the joint-stock company form out of the reach of the vast majority of private entrepreneurs. To simplify the creation of joint-stock companies, Soviet authorities published a model

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<sup>46</sup> *Id.* art. 10.

<sup>47</sup> *Id.*

<sup>48</sup> *Polozhenii ob aktsionernykh obshchestvakh* [Statute on Joint-Stock Companies], *Sobranie zakonov i rasporyazhenii SSSR*, Issue No. 49, Item No. 500 (1927).

<sup>49</sup> JOHN N. HAZARD ET AL., *THE SOVIET LEGAL SYSTEM* 185 (3d ed. 1977).

<sup>50</sup> *E.g.*, *O sozdanii aktsionernogo ob'edineniia "Nauchnye pribory"* [On Founding the Joint-Stock Company "Scientific Instruments"], *SP SSSR*, Issue No. 14, Item No. 79 (1990).

<sup>51</sup> *Ob utverzhdenii Polozheniia ob aktsionernykh obshchestvakh i obshchestvakh s ogranichennoi otvetstvennost'iu i Polozheniia o tsennykh bumagakh* [On Approval of the Statute on Joint-Stock Companies and Companies With Limited Liability], *SP SSSR*, Issue No. 15, Item No. 82 (1990) [hereinafter *Approval of Statute on Joint-Stock Companies*].

<sup>52</sup> *Compare, e.g., id.* (discussing the 1990 Soviet statute concerning joint-stock companies) with Delaware General Corporation Law, *DEL. CODE ANN.* tit. 8, §§ 1 *et seq.* (1991).

charter.<sup>53</sup> While joint-stock companies created under USSR legislation are still operating, all new companies must be formed under republic legislation.

In the Russian Federation, although the formation of joint-stock companies is covered by extremely sketchy provisions of the December 25, 1991, Russian Law on Enterprises,<sup>54</sup> the actual operative legislation is the much more detailed decree issued the same day<sup>55</sup> by the Russian Republic Council of Ministers.<sup>56</sup> The provisions of this decree are important for two reasons. First, the basic form of privatization is the conversion of state enterprises into joint-stock companies. Second, the typical form of foreign investment is now through the creation of (or buying into) a Russian joint-stock company.<sup>57</sup>

The Russian Council of Ministers decree authorized the creation of two types of joint-stock company—open and closed. Transfers of stock of a closed company require the consent of a majority of shareholders unless otherwise specified in the charter. Minimum capital is 10,000 rubles for a closed company (\$50 at the market rate of exchange in mid-1992) and 100,000 rubles (\$500) for an open company.<sup>58</sup> In Western Europe, closed joint-stock companies are generally used for businesses with a small number of investors. In Russia, on the other hand, a number of giant state enterprises with thousands of employees have converted themselves into closed joint-stock companies, with the employees as owners. The head of the Russian Parliamentary Committee on Privatization has condemned this practice.<sup>59</sup> He argues that old-style management bureaucrats are using the closed form to ward off real privatization.

The predecessor type of the closed joint-stock company is the limited liability company authorized by a June 1990 decree of the USSR Council of Ministers.<sup>60</sup> This form, similar to the German Gesellschaft mit Beschränkten Haftung (GmbH),<sup>61</sup> offered an alterna-

<sup>53</sup> *Primernyi ustav aktsionernogo obshchestva* [Model Charter of a Joint-Stock Company], 49 EKON. I ZH. 12 (1990).

<sup>54</sup> On Enterprises and Entrepreneurial Activity, *supra* note 10, art. 10.

<sup>55</sup> The Russian lawmakers were not giving up Christmas festivities to pass corporation laws. By Russian Orthodox tradition, Christmas is on January 7, now a legal holiday. Ob'javlenii 7 ianvariia (Rozhdestva Khristova) nerabochim dnev [On Declaring January 7 (Christmas) to be a Holiday], Vedomosti RSFSR, Issue No. 1, Item No. 1 (1991).

<sup>56</sup> Ob utverzhenii Polozheniia ob aktsionernykh obshchestvakh [On Approving the Statute on Joint-Stock Companies], SP RSFSR, Issue No. 6, Item No. 92 (1991) [hereinafter On Approving Statute on Joint-Stock Companies].

<sup>57</sup> See, e.g., Andrei Galigev, *New Firms With Foreign Investment*, Aug. 17, 1992, available in LEXIS, Europe Library, USSR File.

<sup>58</sup> On Approving Statute on Joint-Stock Companies, *supra* note 56.

<sup>59</sup> Peter Filippov, *Itak sozhdadim klass sobstvennokov-krepostnykh?* [So, Are We Creating a Class of Owners Who are Serfs?], ROSSIISKAIA GAZETA, Mar. 10, 1992, at 1.

<sup>60</sup> Approval of Statute on Joint-Stock Companies, *supra* note 51.

<sup>61</sup> The GmbH is organized as a partnership without tradeable shares. Although recognized as a partnership, the GmbH is treated as a person with limited liability under German law. For an explanation of the GmbH in American legal terms, see *GmbH Formed*

tive to the joint-stock company for situations when the founders did not envision trading of shares. It had a minimum capital requirement of 50,000 rubles, much lower than the requirement for a USSR joint-stock company. The authorities published a model founders' contract and a model charter for a limited liability company.<sup>62</sup> The Russian enterprise law mentions limited liability companies, but the implementing legislation provides only for joint-stock companies. The lack of clear law on the limited liability company form creates no practical problems because it is possible to draft a corporate charter under the Russian provisions for a closed joint-stock company<sup>63</sup> that creates the virtual economic equivalent of a limited liability company.

The 1990 Russian decree states general principles common to both closed and open joint-stock companies. While not so restrictive as to hinder business operations practically, the decree is less flexible than the typical United States corporation law. It allows both common stock and nonvoting preferred stock. However, it apparently does not allow differential voting rights for common stock or conditional voting rights for preferred stock.<sup>64</sup> Stock options apparently may be issued only to employees. The decree requires the formation of reserves in the amount of 10% of the charter capital. Companies are limited to the activities specified in their charters, although apparently some local authorities will allow charters to state the activity as "all business activities not prohibited by law."<sup>65</sup>

### G. *The Union of Enterprises*

The Russian enterprise law specifically allows enterprises to form "unions" and other organizations.<sup>66</sup> The rights and duties of members are determined by contract. Provisions violating antimonopoly legislation are void.

### H. *Branches and Representative Offices of Enterprises*

Foreign firms have an important option: they may open a "representative office" in Russia, and thus do business without creating a new business entity under Russian law.<sup>67</sup> It is not always easy to ob-

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*Under West German Law Classified as Partnership for U.S. Income Tax Purposes*, 31 TAX MGMT. MEMORANDUM 54 (1990).

<sup>62</sup> *Primernyi uchreditel'nyi dogovor o sozdanii obshchestva s ogranichennoi otvetstvennost'iu* [Model Founding Contract on the Creation of a Company With Limited Liability], 49 EKON. I ZH. 12 (1990); *Primernyi ustav obshchestva s organichennoi otvetstvennost'iu* [Model Charter of a Company With Limited Liability], 49 EKON. I ZH. 11 (1990).

<sup>63</sup> On Approving Statute on Joint-Stock Companies, *supra* note 56.

<sup>64</sup> *Id.*

<sup>65</sup> Conversations between the author and Russian business executives.

<sup>66</sup> On Enterprises and Entrepreneurial Activity, *supra* note 10.

<sup>67</sup> Former Soviet procedures for opening "representative offices" in Russia are apparently still in use by Russian Federation authorities. For a description of these proce-

tain permission to open such an office. Furthermore, there may be adverse tax consequences because representative offices are taxed on income derived from operations in Russia. A dozen years ago it was virtually impossible to maintain a business presence in the USSR without obtaining permission to be a "representative office." As legal regulation became more lax, many foreign companies opened offices in Moscow without obtaining permission. During the last year or two of existence of the USSR, the USSR Ministry of Finance attempted to tax these de facto representative offices just as if they were de jure representative offices. The Russian Federation is likely to continue this practice.<sup>68</sup>

*I. The Enterprise Created on the Basis of Leasing and Buyout of Property by the Labor Collective*

This category of enterprise is different from the others specified in the Russian enterprise law because it is not a form of business organization, but rather a method of changing forms of business organization. One of the many experiments of the late 1980s involved the leased enterprise. Early in 1989, there was legislation on leasing,<sup>69</sup> followed by new, more detailed, and more liberal legislation later in the same year.<sup>70</sup> Leasing was used to increase employee incentives by letting employees lease some or all of the assets of a state enterprise and keep the profits they made. However, the application in 1989 and 1990 of severe wage controls to all enterprises, including leased enterprises, the temporary imposition of an 80% to 100% excess profits tax during 1990, and the creation of opportunities for private business ownership all undoubtedly have reduced the attractiveness of leasing.

The 1989 USSR legislation created the possibility of converting a leased enterprise to a "collective enterprise" through an employee buyout.<sup>71</sup> Upon completion of the buyout, the employees would obtain the right to operate the enterprise as a "collective enterprise" or to convert it to a joint-stock company or some other business form. The August 1990 USSR legislation on the small enterprise, dis-

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dures, see *Polozhenie o poriadke otkrytiia i deiatel'nosti v SSSR predstavitel'stv inostrannykh firm, bankov i organizatsii* [Statute on the Procedure for Opening and Activity in the USSR of Representations of Foreign Firms, Banks, and Organizations], SP SSSR, Issue No. 1, Item No. 8 (1990).

<sup>68</sup> Conversations between author and lawyers representing foreign businesses in Moscow.

<sup>69</sup> *Ob arende i arendnykh otnosheniakh v SSSR* [On Leasing and Leasing Relations in the USSR], *Vedomosti SSSR*, Issue No. 15, Item No. 105 (1989).

<sup>70</sup> *Osnovy zakonodatel'stva Soiuza SSR i soiuznykh respublik ob arende* [Fundamentals of Legislation of the USSR and the Union Republics on Leasing], *Vedomosti SSSR*, Issue No. 25, Item No. 481 (1989).

<sup>71</sup> *Id.*



cussed below,<sup>72</sup> outlined one form for the collective enterprise. However, detailed legislation on the legal status of a collective enterprise was never passed.

*J. The Production Cooperative*

The cooperative form has a long history in Soviet law. Ideologically, it was considered to be an intermediate stage between the despised private enterprise and the revered state enterprise. Under Stalin it was the form used for collective farms, for stores in rural areas, and for handicraft business. It persisted through the Brezhnev area as the main form of organization for farms and for stores in rural areas. In 1987, Gorbachev experimented with allowing use of the cooperative form in a number of other areas.<sup>73</sup> However, this experiment marked a major change. Under Gorbachev's predecessors "cooperatives" really were state enterprises disguised as cooperatives. Many of the new "cooperatives" really were private businesses disguised as cooperatives. Nevertheless, in one of the many contradictions of *perestroika*, the law against the use of cooperatives as a cover for private businesses remained in effect until its repeal in late 1991. Article 153 of the Russian Republic Criminal Code forbade "[p]rivate entrepreneurial activity with the use of state, cooperative, or other social forms."<sup>74</sup> The success of the experiments with private business cooperatives led to the passage in 1988 of a general law on cooperatives.<sup>75</sup>

The general law on cooperatives, for the first time since the New Economic Policy of the 1920s, provided a viable form for private business activity. In many ways the cooperative form was similar to the limited liability company known to many continental European legal systems—like the German GmbH.<sup>76</sup> The members of the cooperative shared profits, but were not personally liable for the debts of the cooperative. The cooperative could hire nonmember employees who would work for wages, not for a share of the profits.

Entrepreneurial Soviet citizens promptly formed large numbers of cooperatives. The authorities soon found it necessary to impose

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<sup>72</sup> See *infra* text accompanying note 80.

<sup>73</sup> O sozdanii kooperativov obshchestvennogo pitaniia [On Creating Food Service Cooperatives], SP SSSR, Issue No. 10, Item No. 41 (1987); O sozdanii kooperativov po bytovomu obsluzhivaniiu naseleniia [On Creating Cooperatives for Everyday Services for the Public], SP SSSR, Issue No. 11, Item No. 43 (1987); O sozdanii kooperativov po proizvodstvu tovarov narodnogo potrebleniia [On Creating Cooperatives for the Production of Consumer Goods], SP SSSR, Issue No. 10, Item No. 42 (1987); O sozdanii kooperativov po vyrabotke konditerskikh i khlebobulochnykh izdelii [On Creating Cooperatives for the Processing of Candy and Bakery Products], SP SSSR, Issue No. 44, Item No. 148 (1987).

<sup>74</sup> Amendments and Additions to Criminal Code, *supra* note 41.

<sup>75</sup> O kooperatsii v SSSR [On Cooperatives in the USSR], *Vedomosti SSSR*, Issue No. 22, Item No. 355 (1988).

<sup>76</sup> See *supra* note 61 and accompanying text.

some restrictions.<sup>77</sup> Some of the restrictions merely involved over-sights in the original legislation. The Council of Ministers forbade cooperatives to produce firearms, for instance. A restriction on publishing by cooperatives showed the limits of *glasnost*. Other restrictions were designed to prevent cooperatives from taking advantage of the spread between official state prices and de facto market prices.<sup>78</sup> As will be seen below, changes in tax legislation soon ended the initially favored position of cooperatives.

In 1990, the authorization of the creation of small enterprises, limited liability companies, and joint-stock companies, discussed above, has created more attractive alternatives to the cooperative as forms for the organization of new businesses. The legislation on privatization of state and collective farms provides that farmers who wish to remain in such farms may reorganize them as cooperatives.

#### IV. Obsolete Enterprise Forms

A number of other enterprise forms exist as holdovers from before the disappearance of the USSR. New enterprises are not being created in these forms. Many old enterprises are being converted from these forms into the forms currently allowed under Russian law. However, for several years at least, these obsolete forms of doing business will retain some importance.

##### A. *The State and Collective Farm*

The state farm is a special form of state enterprise, one that engages in farming activity. The collective farm is in theory a cooperative, but in fact, under the Soviet system, was run as a state agricultural enterprise. New legislation provides for the privatization of both state and collective farms.<sup>79</sup> Farmers will have the right to withdraw from the farms. Members who stay may reorganize the farms as cooperatives or as joint-stock companies.

##### B. *The Small Enterprise*

In August 1990, the USSR Council of Ministers adopted legisla-

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<sup>77</sup> O regulirovanii otdel'nykh vidov deiatel'nosti kooperativov v sootvetstvii s Zakonom SSSR "O kooperatsii v SSSR" [On the Regulation of Individual Types of Activity of Cooperatives in Accordance with the USSR Law "On Cooperatives in the USSR"], SP SSSR, Issue No. 4, Item No. 12 (1989); O vnesenii izmenenii i dopolnenii v Zakon SSSR "O kooperatsii v SSSR" [On Amending and Augmenting the USSR Law "On Cooperatives in the USSR"], Vedomosti SSSR, Issue No. 19, Item No. 350 (1989).

<sup>78</sup> See sources cited *supra* note 77.

<sup>79</sup> *Rekomendatsii po reorganizatsii kolkhozov i sovkhov* [Recommendations on Reorganization of Collective and State Farms], 9 EKONOMICHESKAIA GAZETA — EKONOMIKA I ZHIZN' [EKON. GAZ.] 18 (1992); Iurii Maksimovich Pekhterev, *O reorganizatsii kolkhozov i sovkhov Rossii* [On the Reorganization of Russia's State and Collective Farms], 8 EKON. GAZ. 17 (1992); *O poriadke reorganizatsii kolkhozov i sovkhov* [On the Procedure for Reorganizing Collective and State Farms], 3 EKON. GAZ. 19 (1992).

tion on small enterprises, defined as those with up to two hundred employees in industry and construction, up to one hundred in science, up to fifty in other areas of production, up to twenty-five in nonproduction areas, and up to fifteen in retail trade.<sup>80</sup> Under this legislation the "small enterprise" was both an enterprise form and an enterprise category. For small individual, family, and collective enterprises, it was a form governed only by the August 1990 decree. For other types of enterprises, it was a category for which the August 1990 decree provided exceptions to the general rules for each type of enterprise.

Any individual or group of individuals could found a small enterprise. The August 1990 decree allowed the founders to determine the enterprise status by the charter. The decree provided that if the local government fails to approve the charter within two weeks, the founders may seek a court order requiring approval.

In the fall of 1990, the present author was in Moscow and discussed the procedure with a Soviet businessman. He said that the most important feature of the legislation was that it provided for approval at the district ("raion") level. Since large cities like Moscow contain many districts, there were, according to him, two favorable results of this feature. First, some districts took more liberal interpretations of the law than others, thereby allowing founders to "shop" for a district that would approve their particular charter provisions. Second, competition among officials of different districts sharply reduced the amount of the bribe demanded by district officials before approving the charter. The existence of competition for providing approval undoubtedly was much more useful than the theoretical possibility of going to court. Small enterprises registered under the USSR legislation must re-register as sole proprietorships under Russian law.

### *C. The Joint Enterprise*

In 1987, the Presidium of the Supreme Soviet authorized the creation of a new business form, the "Joint Enterprise," in which foreign investors and Soviet organizations would join together to undertake business activity.<sup>81</sup> The commercial importance of joint

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<sup>80</sup> O merakh po sozdaniuu i razvitiuu malykh predpriatii [On Measures for the Creation and Development of Small Enterprises], SP SSSR, Issue No. 19, Item No. 101 (1990).

<sup>81</sup> O voprosakh sviazannykh s sozdaniem na territorii SSSR i deiatel'nost'iu sovmestnykh predpriatii, mezhdunarodnykh ob'edinenii i organizatsii s uchastiem sovet-skikh i inostrannykh organizatsii, firm i organov upravleniia [On Questions Connected with the Creation on the Territory of the USSR and the Activity of Joint Enterprises, International Amalgamations, and Organizations with the Participation of Soviet and Foreign Organizations, Firms, and Administrative Agencies], Vedomosti SSSR, Issue No. 2, Item No. 35 (1987); O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriatii s uchastiem sovet-skikh organizatsii i firm kapitalisticheskikh i razvivaiushchikhsia stran [On the Procedure for the Creation on the Territory of the USSR and the Activity of

ventures engendered some literature.<sup>82</sup> Subsequent legislation lifted restrictions on the percentage requirement for foreign ownership and allowed individual Soviet citizens to participate in joint ventures.<sup>83</sup> Most importantly, however, an October 26, 1990 edict allowed joint ventures and wholly owned foreign investments to use any of the forms of business available to Soviet investors under Soviet law.<sup>84</sup> The 1990 legislation on investment activity reconfirmed this principle.<sup>85</sup> Russian Federation law does not provide for a "Joint Enterprise" as a specific business form; foreign investors must select instead from one of the ordinary forms available to all investors under Russian law.

## V. Tax Treatment

In December 1991, the Russian Republic adopted a package of new tax legislation. A major portion of revenue is raised by value-added and excise taxes, which apply equally to forms of businesses.<sup>86</sup> The other main source of revenue from businesses is the profits tax.<sup>87</sup> In general the profits tax applies uniformly, without regard to business form. However, the profits tax includes a tax on dividends received by an enterprise, and thus may favor a unified structure over a tiered structure involving holding companies. Furthermore, major tax revisions are almost certain to occur during the course of 1992.

Russian foreign investment legislation authorizes, but does not require tax concessions for enterprises with substantial foreign investment in priority areas of the economy or in particular regions.<sup>88</sup> As Russia moves toward a "purist" market economy, the idea of "priority areas of the economy," which is a relic of state planning, is likely to fade away.

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Joint Enterprises with the Participation of Soviet Organizations and Firms of Capitalist and Developing Countries], SP SSSR, Issue No. 9, Item No. 40 (1987).

<sup>82</sup> Perhaps the best guide is KAJ HOBÉR, *JOINT VENTURES IN THE SOVIET UNION: A LEGAL TREATISE* (1989).

<sup>83</sup> Ob inostrannykh investitsiakh v SSSR [On Foreign Investments in the USSR], Edict of President M. Gorbachev, Oct. 26, 1990, *Vedomosti SSSR*, Issue No. 44, Item No. 944 (1990).

<sup>84</sup> *Id.*

<sup>85</sup> *Osnovy zakonodatel'stva ob investitsionnoi deiatel'nosti v SSSR [Fundamental Principles of Legislation on Investment Activity in the USSR]*, *IZVESTIA*, Dec. 16, 1990, at 2.

<sup>86</sup> O naloge na dobavlennoiui stoisimost' [On the Value-Added Tax], *Vedomosti RSFSR*, Issue No. 52, Item No. 1871 (1991); Ob aktsizakh [On Excise Taxes], *Vedomosti RSFSR*, Issue No. 52, Item No. 1872 (1991); O poriadke vvedeniia v deistvie zakonov RSFSR "O naloge na dobavlennoiui stoisimost'" i "Ob aktsizakh" [On the Procedure for Implementing the RSFSR Laws "On the Value-Added Tax" and "On the Excise Tax"], *Vedomosti RSFSR*, Issue, No. 52, Item No. 1873 (1991).

<sup>87</sup> *O naloge na pribyl' predpriatii i organizatsii [On the Profits Tax on Enterprises and Organizations]*, 10 *EKON. GAZ.* 14 (1992).

<sup>88</sup> Ob inostrannykh investitsiakh v RSFSR [On Foreign Investments in the RSFSR], *Vedomosti RSFSR*, Issue No. 29, Item No. 1008 (1991).

Starting in the late 1980s there was considerable talk of "Free Economic Zones." Originally, legislation implemented the idea of designating areas where free enterprise and foreign investment would be allowed.<sup>89</sup> However, this idea became meaningless by 1992, when, as described throughout this article, restrictions on free enterprise and foreign investment were lifted throughout the Russian Federation. Nevertheless, a number of free economic zones were created.<sup>90</sup> The authorities in these zones now are lobbying for favorable tax and customs duty treatment. However, these requests have met with stiff resistance, since the Russian government, under pressure from the International Monetary Fund, is making a serious effort to balance its budget by strict and uniform enforcement of tax legislation.<sup>91</sup> Thus, in practice, businesses in "free economic zones" are subject to essentially the same legal regime as businesses in the rest of the Russian Federation.

## VI. Regulatory Treatment

### A. Large Enterprises—"Antimonopoly" Legislation

Under Brezhnev the trend was to merge enterprises into super-enterprises, called amalgamations (*ob"edineniia*). Planners often made a single amalgamation responsible for the total Soviet production of a key product. As a result, the monopolistic structure of the economy creates serious problems in moving toward a market economy.<sup>92</sup>

Russian Federation legislation maintains the goals of preventing further monopolistic concentration, undoing some of the existing such concentration, and stopping price gouging by monopolists.<sup>93</sup> This legislation will place some limits on forms of doing business, since, if enforced, it may prevent the creation or maintenance of monopolistic enterprises or cartels.

<sup>89</sup> O sozdaniu zon svobodnogo predprinimatel'stva [On Creating Free Enterprise Zones], *Vedomosti RSFSR*, Issue No. 15, Item No. 162 (1990).

<sup>90</sup> See, e.g., Postanovlenie Prezidiuma Verkhovnogo Soveta RSFSR o sozdaniu svobodnoi ekonomichskoi zony "Sakhalin" (SEZ Sakhalin) [Decree of the Presidium of the RSFSR Supreme Soviet on the Creation of the "Sakhalin" Free Economic Zone (Sakhalin FEZ)], *Vedomosti RSFSR*, Issue No. 22, Item No. 793 (1991).

<sup>91</sup> *Legal Chaos Hampers Far East Development Plan*, Russia and Commonwealth Business Law Report, March 6, 1992, available in LEXIS, Europe Library, USSR File.

<sup>92</sup> Heidi Kroll, *Reform and Monopoly in the Soviet Economy*, CENTER FOR FOREIGN POLICY DEVELOPMENT OF BROWN UNIVERSITY BRIEFING PAPER NO. 4 (1990).

<sup>93</sup> *Polzhenie o poriadke regulirovanie tsen na produktiiu predpriatii-monopolistov* [Statute on the Procedure for Regulating Prices on the Products of Monopolist Enterprises], 6 *EKON. GAZ.* 17 (1992) (statute approved by the Russian Federation Ministry of the Economy and Finance, Dec. 29, 1991); O konkurentstii i organichenii monopolisticheskoi deiatel'nosti na tovarnykh rynkakh [On Competition and Limitation of Monopolist Activity in Goods Markets], *Vedomosti RSFSR*, Issue No. 16, Item No. 499 (1991); *Voprosy Gosudarstvennogo komiteta RSFSR po antimonopol'noi politike i podderzhke novykh ekonomicheskikh struktur* [Matters Involving the RSFSR State Committee on Antimonopoly Policy and Support of New Economic Structures], *SP RSFSR*, Issue No. 2, Item No. 12 (1991).

### B. *The Bank*

As in other countries, Russian has special formal requirements for opening banks.<sup>94</sup> A wide variety of restrictions exist, including the requirement of a license to open a bank and the requirement of minimum reserve funds. There is no requirement that banks be state-owned; indeed, governmental institutions are forbidden to found commercial banks.

## VII. **Concluding Observations**

Russian law now contains an impressive array of legal forms for doing business. Someone entering business in Russia has a range of choices roughly equivalent to that of someone starting a business in the United States. Unfortunately, as in Tsarist times, entrepreneurs still face bureaucratic obstacles and demands for bribes.<sup>95</sup> The freeing of prices in the spring of 1992 has removed the most serious barrier to the market. The next key step will be implementation of the privatization process to move the basic productive assets from the failed state enterprises to small businesses and joint-stock companies. Then, it will be time to implement capital markets to allow rational allocation of investment funds and to regulate them to protect stock buyers and sellers.<sup>96</sup>

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<sup>94</sup> O bankakh i bankovskoi deiatel'nosti v RSFSR [On Banks and Banking Activity in the RSFSR], Dec. 2, 1990, Vedomosti RSFSR, Issue No. 27, Item No. 357, as amended, Law of Dec. 13, 1991, No. 2033-1, Vedomosti RSFSR, Issue No. —, Item No. — (1992); Decree of the Supreme Soviet of the RSFSR of Dec. 12, 1991, No. 2026-1, Vedomosti RSFSR, Issue No. —, Item No. — (1992).

<sup>95</sup> Petr Filippov, *Ne prosit' milostei u chinovnika, vziat' ikh—nasha zadacha* [Our Task is Not to Seek Favors from Bureaucrats But to Take Them], ROSSIISKAIA GAZETA, May 14, 1992, p. 3.

<sup>96</sup> Some market regulation has begun. See *Polozhenie o litsenzirovanii birzhevoi deiatel'nosti na rynke tsennykh bumag* [Statute on Licensing Marketing Activity on the Securities Market], 22 EKON. GAZ. 18 (1992); *Polozhenie ob attestatsii spetsialistov investitsionnykh institutov i fondov birzh (fondovykh otdelov birzh) na pravo soversheniia operatsii s tsennymi bumagami* [Statute on Attestation of Specialists of Institutes and Funds (or Fund Departments) of Markets to Have the Right to Conduct Operations with Securities], 22 EKON. GAZ. 18 (1992).