Agricultural Land Reform and Farm Reorganization in Tajikistan

Jennifer Duncan

May 2000
This report may be reproduced in whole or in part with acknowledgment as to source.

© Copyright Rural Development Institute 2000
ISSN 1071-7099
The Rural Development Institute (RDI), located in Seattle, Washington, USA, is a nonprofit 501(c)(3) corporation. RDI is a unique organization of lawyers devoted to problems of land reform and related issues in less developed countries and in countries whose economies are undergoing transition. RDI's goal is to assist in alleviating world poverty and instability through land reform and rural development. RDI staff have conducted field research and advised on land reform issues in 35 countries in Asia, Latin America, Eastern Europe and the Middle East. For more information about RDI, visit the RDI web site at <www.rdiland.org>.

Jennifer Duncan is a staff attorney at RDI and the Director of RDI's Women and Land Tenure Program.

This report was originally produced in November, 1998, for contribution to a Farm Restructuring Project conducted by the Land Tenure Center, SOFRECO, and the World Bank. The author expresses her appreciation to each of these organizations, and especially to the SOFRECO staff in Dushanbe, Tajikistan for their generous assistance and in-country support. The author thanks Professor Roy Prosterman, RDI President, Tim Hanstad, RDI Executive Director, and Leonard Rolfs, RDI Deputy Director, for their analytical contributions to this report, Charles Cottrell, RDI Research Assistant, for his technical assistance, and Jenin Assaf, RDI Office Manager, for production support.

Correspondence may be addressed to the author at the Rural Development Institute, 4746 11th Avenue N.E., #504, Seattle, Washington 98105, U.S.A., faxed to (206) 528-5881, or e-mailed to <info@rdiland.org>.
CONTENTS

EXECUTIVE SUMMARY ..........................................................................................................1
INTRODUCTION ........................................................................................................................2
OVERVIEW OF LEGISLATION ...............................................................................................4
OVERVIEW OF FARM RESTRUCTURE ..............................................................................7
ISSUES ......................................................................................................................................15
   I. Private Ownership .............................................................................................................15
   II. Land Transactions ...........................................................................................................16
   III. Privatization ....................................................................................................................20
   IV. Land Shares ....................................................................................................................23
   V. Shares to non-land assets (property shares) ....................................................................26
   VI. Enterprise Restructuring ...............................................................................................28
   VII. Land Use and Management .........................................................................................32
   VIII. Registration ..................................................................................................................36
   IX. Tax ....................................................................................................................................42
   X. Compulsory Acquisition: Insufficient safeguards for the taking of private land rights for public and private purposes .....................................................42
   XI. Land Dispute Resolution ...............................................................................................43
   XII. Legal Authority and Drafting .......................................................................................44
CONCLUSION ........................................................................................................................46

ANNEXES

Annex 1: Legislation of Tajikistan Affecting Land Reform, as of October 1998
Annex 2: Summary of Relevant Provisions of Reform Laws in Chronological Order
Annex 3: Items to be Included in a Land Registration Law and Implementing Regulations
EXECUTIVE SUMMARY

Land reform efforts in Tajikistan have realized significant results in the past six years. Thousands of private “dekhan” farmers are now producing between 33% and 100% higher yields than are large collective enterprises. The amount of land held in private household subsidiary plots has doubled since 1995 to account for approximately 18% of all arable land. Production on this 18%, farmed privately, provides subsistence for rural families and contributes a lion’s share to the total national product. Perhaps of greatest importance, private farming successes have not gone unnoticed in the Tajik countryside; agricultural workers on state farms (sovkhozes) and collective farms (kolkhozes) express overwhelming demand for dekhan farming.

Gains from land and agrarian reforms in Tajikistan remain precarious, however, in light of the continued dominance of large, collectively-operated agricultural enterprises. While 40% of the sovkhozes and kolkhozes have technically restructured into lease share enterprises, joint stock companies, or agricultural cooperatives, the change in many cases has been in name only. By some estimates 90% of these “restructured” enterprises remain large-scale collectives. In contrast, barely five percent of the arable land in Tajikistan is now held in dekhan farms, the enterprise form most closely resembling private farms. Sovkhozes, largely exempted from reforms, remain entrenched on over one-third of the arable land.

The promise of future progress in land and agrarian reforms in Tajikistan hinges on development of a legal framework that accommodates private-style land ownership and further break-up of large agricultural enterprises. This will require:

• First, the adoption of private land ownership or, at a minimum, long-term transactable tenure rights secure from excessive state intervention;

• Second, a clear legal transfer of primary land use rights from large collectively-run enterprises to each of their members;

• Third, a removal of the bureaucratic and cost barriers that obstruct the creation of dekhan farms;

• Fourth, development of a land registration system that provides government-guaranteed legal title to land;

• Fifth, creation of legal and infrastructural systems that facilitate small-scale private farming, such as appropriate rules on taxing and compulsory acquisition, and development of adequate mechanisms for land dispute resolution; and

• Sixth, a detailed review of current legislation on land relations and land reform to clarify key provisions and harmonize inconsistencies.
INTRODUCTION

Creating the legal framework necessary to facilitate agricultural land reform in Tajikistan is requisite to achieving two goals: (1) establishing land tenure security for private landholders; and (2) developing a market in land rights. Tenure security facilitates economic production by providing the conditions necessary for landowners and land users to put their land to its highest and best use without fear of losing the land or the benefits reaped on it. One of the primary benefits of tenure security is an increased ability to access credit by creating greater incentives for investment, improved creditworthiness of projects, and enhanced collateral value of land.\(^1\) Land markets function as a powerful tool for encouraging productivity and investment among land users. Effective markets for transferring land and rights for compensation provide a means to reallocate those rights to the most productive users. Land markets also provide the basis for the mortgage of rights in land, which increases access to critically needed capital.

Farm restructuring and privatization in many of the countries of the former Soviet Union has taken place through a series of steps beginning with the re-allocation of the land and non-land assets of the kolkhozes and sovkhozes into individual shares held by members. Once these shares have been allocated, share holders become the primary right holders of the property. They may devise their shares to their children, lease them out to the former kolkhoz or sovkhoz, lease them out to private farmers, contribute them for use to the charter capital of the former kolkhoz or sovkhoz, contribute them permanently to the charter capital of the former kolkhoz and sovkhoz, or withdraw the share to farm privately. The important point is that each individual member may decide what to do with his or her share. The allocation and distribution of land shares is the cornerstone of the privatization process for kolkhozes and sovkhozes; it is the first prerequisite to development of a land market.

This report will examine the adequacy of the legal components of land reform in Tajikistan to establish tenure security and an agricultural land market. Although privatization and farm break-up (accompanied by significant demand for private farming by farm workers who are not yet members of dekhan farms) have begun to occur in Tajikistan, both laws and implementation of the laws have failed to achieve either private tenure security or the basis for a functioning land market.

Realization of land share rights, or individual access to the primary land use right of inheritable life-long tenure set forth in the Land Code,\(^2\) is hindered in Tajikistan by several

---

\(^1\) Other benefits to tenure security include: (1) Raising productivity through increased agricultural investment; (2) Increasing land transactions and facilitating the transfer of land from less efficient to more efficient uses by increasing the certainty of contracts and lowering enforcement costs; (3) Reducing the incidence of land disputes through clearer definition and enforcement of rights; (4) Reducing soil erosion and other environmental degradation to land; and (5) Creating political stability by providing farmers a more significant stake in society. See Tim Hanstad in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN ECA COUNTRIES: A COMPARATIVE PERSPECTIVE (Roy Prosterman & Tim Hanstad, eds., 1998) 4-5. (Unpublished document on file with the Rural Development Institute).

\(^2\) Four types of land tenure are available to private individuals and enterprises in Tajikistan, as defined in the Land Code of the Republic of Tajikistan [Land Code] art. 14-17 (December 13, 1996):

(1) “Land tenure of unlimited duration,” which is available to state-run and cooperative agricultural enterprises, international associations and organizations, and other enterprises and associations.
factors which include: (1) the absence of private land ownership; (2) limited land transaction rights; (3) impediments in the farm privatization and restructure process; (3) severe restrictions on land use; (4) an insufficient land registration system; (5) burdensome taxes on new private farmers; (6) a lack of legal protections against revocation and reassignment of land use rights by the state; (7) insufficient mechanisms for land dispute resolution; and (8) a body of reform legislation that is often overlapping and contradictory.

This report is based on information collected in Tajikistan in October, 1998. In contribution to a World Bank Institutional Building and Technical Assistance Project, the author surveyed legal impediments to development of an agricultural land market in Tajikistan. In this context, the author reviewed relevant legislation, interviewed state and local officials, and conducted field interviews of farm managers, farm workers and new dekhan farmers using Rapid Rural Appraisal techniques. In the sections that follow, I will outline the legal chronology for land reform in Tajikistan, offer a comparison of the four different types of “restructured” agricultural enterprises, and discuss each of the legal issues that prevents Tajikistan from realizing the benefits of wide scale land reform. Annex 1 contains a list of Tajik legislation affecting land reform, Annex 2 summarizes important provisions of this legislation, and Annex 3 provides a list of items to be included in a land registration law.

(2) “Life-long inheritable tenure,” which is available to physical persons or groups of citizens to establish dekhan farms or to take up other "traditional trades."

(3) “Terminal land use,” which is available to secondary users for public use only. (According to Article 13 of the Land Code, private holders of land rights are considered to be “primary” or “secondary.” Primary landusers hold tenure of unlimited duration or life-long inheritable tenure, while secondary landusers are lessees of land from the state land reserve fund or from private individuals who are primary rights holders.)

(4) “Land lease,” which is available to secondary users for a term of 20 years (if from a private primary holder) or 10 years (if from the land reserve funds) for a price not to exceed the land tax rates.
OVERVIEW OF LEGISLATION

Land reform legislation in Tajikistan consists of a large body of laws, presidential decrees, government resolutions and administrative regulations. Land reform efforts began in 1992, with the Law "On Dekhan Farms" and the Law "On Land Reform." The Law "On Dekhan Farms" established the right of every citizen to create a dekhan farm, primarily from the land kept in the local rayon administration’s land reserve fund. The law called for the division of sovkhozes and kolkhozes into individual, inheritable land shares, to be certified by proper documentation. It also established the right of every member of a kolkhoz or sovkhoz to a property share.

The Law "On Land Reform" added to the Law "On Dekhan Farms" the requirement that the land of kolkhozes and sovkhozes be restructured into dekhan farms, lease share enterprises, and agricultural cooperatives. It also established an exemption from restructure for state farms engaged in specialized forms of production.

In 1993 the President issued Decree No. 699 "On Organization of Dekhan Farming" to accompany the Law "On Dekhan Farms" by setting forth the step-by-step process governing application for and allotment of a dekhan farm. The process detailed in this Decree requires numerous layers of approval for the allocation of a dekhan farm and constitutes a seemingly insurmountable bureaucratic undertaking for the applicant. See Section VI, infra, for further discussion.

In 1995, the President issued two decrees on land reform. The first, Decree No. 342, called for the assignment of 50,000 hectares of land to be transferred from sovkhozes and kolkhozes to private household plots. According to the language in the regulations that accompanied the decree, this increased the total area of arable land held in household plots from 8% to 15%. (The President augmented this amount by 25,000 additional hectares in Decree No. 874, issued in December 1997, raising the total area of arable land held in household plots to 18%.) In October of 1995, the President issued Decree No. 621 “On the Structural Reorganization of Kolkhozes and Sovkhozes and Other Agricultural Enterprises.” This decree reiterated the essence of the 1992 Law “On Land Reform,” calling for the restructure of

---

3 See Annex 1 for a list of laws affecting land reform and Annex 2 for a detailed summary of the major legislative documents.
4 This body of laws contains many overlapping and conflicting provisions. Furthermore, the hierarchy of legal authority in Tajikistan is not established in the Constitution or in any law seen by Author. The authority of a Presidential Decree, for example, either standing on its own or vis-à-vis a law passed by the Majlisi Osli (parliament), is not clear. See Section XII, infra, for further discussion.
6 Id. at art. 10.
7 Id.
9 Id. at art. 15.
10 Household plots are held in lifetime inheritable proprietorship. Id. at art. 3.
11 Author was unable to locate this decree in country. Apparently the decree limits the additional 25,000 hectares to household plots of refugees returning from the civil war.
unprofitable sovkhozes and kolkhozes into lease-share enterprises, cooperatives, and dekan farms.  

It also required profitable sovkhozes to transfer into kolkhozes.

Presidential Decree No. 522 along with accompanying regulations, issued in June of 1996, is considered by many in Tajikistan to be the fundamental document for establishing the right of individual sovkhoz and kolkhoz members to land shares, although this appears to have been accomplished by the Law “On Dekhan Farms” in 1992. Decree No. 522 places authority over farm restructure with the Land Resources Committee and with a newly created National Commission of Reorganization of Agricultural Enterprises. The regulations accompanying Decree No. 522 establish a worker’s “unconditional right” to withdraw a land share from a kolkhoz without approval from the farm management. The regulations also place the Land Commission in charge of allocating on each unrestructured farm a portion of the land for division into shares among members and a portion to be contributed to the state land redistribution fund. The regulations reiterate the requirement in the 1992 Law “On Dekhan Farms” that all farm members receive “proper documentation” for their land shares, and that a worker withdrawing from a kolkhoz has the right to an in-kind share.

In 1996 the state also published amended versions of the Land Code and the Law “On Lease” which incorporated some of the provisions in the reform laws issued after 1990, when both laws were first promulgated.

In 1997, the government published regulations on the role of local Land Committees in land reform and land management, and the administration published two sets of “recommendations” on reorganization of sovkhozes and kolkhozes. Although these documents contain important guidance on privatization and farm restructure, they are recommendations only, rather than binding authority. The recommendations reaffirm the right of every sovkhoz or kolkhoz member to a land and property share, and the right to withdraw this share in-kind to start a dekan farm. In the alternative, a person may contribute his land and property share to the charter capital of a joint stock company or as entrance participatory shares to a production cooperative. The recommendations reiterate the right to inherit land shares and promote the transfer of shares among farm members. They seek to establish a step-by-step methodology for use by the rayon Land Committees in determining the size and allocation of land and property shares.

---

13 Id. at art. 10.
14 Government Resolution No. 422 “On Local Land Committees” (September 13, 1996) (Tajikistan).
15 Recommendations on Reorganization of kolkhozes and sovkhozes of the Tajikistan Republic by the Committee on Land Organization and Land Resources under the Government of Tajikistan Ministry of Agriculture [Recommendations on Kolkhozes and Sovkhozes], 1997 (date unknown); Methodological Recommendations on Privatization Implementation in Agriculture, by the Committee on Land Organization and Land Resources under the Government of Tajikistan Ministry of Agriculture, Sept. 22, 1997.
16 Recommendations on Kolkhozes and Sovkhozes at sec. 1.
17 Id. at sec. 3.2.
18 Id.
In June of 1998, the President issued Decree No. 1021 “On Ensuring the Right to Land Use,” which refers to Certificates on Land Use and Land Passports as the documents that confirm an individual’s right to land use. The decree then states that individuals owning subsidiary household plots and dekhan farms have the right to obtain these certificates. Importantly, this decree, issued after the “Recommendations” on farm break up, does not provide for certification of individual land share rights.

In July of 1998, the government issued Resolution No. 244, which reinforced and attempted to implement Decree No. 1021 by attaching an example of a Land Use Certificate and a schedule for the number of enterprises that must be restructured per region by September 1998, December 1998, and March 1999. This resolution also calls for the future promulgation of procedures on the issuance and registration of the Land Use Certificates.

---

21 Id. at sec. 2.
OVERVIEW OF FARM RESTRUCTURE

Tajik land reform laws provide for the restructure of sovkhozes and kolkhozes into four different enterprise forms: (1) production cooperatives; (2) joint stock companies (JSC’s); (3) lease share enterprises (LSE’s); and (4) dekhan farms. In addition, the laws call for the renaming of sovkhozes exempted from privatization as “gozkhozes.” The following table describes and compares the legal mandate, operations, tenure relations and current status of all forms of agricultural enterprises, as well as subsidiary household plots.
# TABLE 1: STATUS OF FARM RESTRUCTURE IN TAJIKISTAN

<table>
<thead>
<tr>
<th>Type of Enterprise</th>
<th>Sources of legal mandate</th>
<th>Operations</th>
<th>Legal Tenure Relations</th>
<th>Status (Statistics on arable hectares adopted from SOFRECO Inception Report)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sovkhoz</strong></td>
<td>Decree No. 522: transforms <em>sovkhозes</em> into <em>kolkhozes</em> &lt;br&gt; Decree No. 522, Land Reform Law, Land Code: <em>sovkhозes</em> involved in elite seed production, cattle-breeding, and other specialized forms of production are exempt from restructure.</td>
<td>State owns all land and property, workers are employees.&lt;sup&gt;22&lt;/sup&gt; Centralized production, accounting, marketing, tax payment. In some cases divided into brigades.</td>
<td>State holds the land; primary land use rights have not been distributed (except in case of partial lease share, see below). &lt;br&gt; Land reform laws establishing the right to both land and property shares apply to <em>sovkhозes</em> and <em>kolkhozes</em>. Field observations show that workers withdrawing from a <em>sovkhоз</em>, however, are not given the right to a property share. &lt;br&gt; It is unclear whether a worker at a <em>sovkhоз</em> exempted from restructure (technically a &quot;goskhoz&quot;) has the right to leave independently with a share to start a <em>dekhan</em> farm. Probable answer is no.</td>
<td>No “<em>sovkhозes</em>” should remain. <em>Sovkhозes</em> should have transitioned into <em>kolkhozes</em> or gozkhozes (if specialized). Authors found widespread use of the title “<em>sovkhоз</em>” to describe state farms, and little familiarity with the term “gozkhoz.” &lt;br&gt; According to the SOFRECO Inception Report&lt;sup&gt;23&lt;/sup&gt; approximately 34% of all arable land remains in state farms, although these farms are technically titled <em>mejkozes</em> (.08% of arable land) and “goskhozes” (33% of arable land)</td>
</tr>
<tr>
<td><strong>Kolkhoz</strong></td>
<td><em>Kolkhoz</em> Act&lt;sup&gt;24&lt;/sup&gt;</td>
<td>Centralized production, accounting, marketing, tax payment. In some cases</td>
<td>The <em>kolkhoz</em> holds the primary use rights to the land. Land and</td>
<td>250,000 ha’s (25% of arable land)</td>
</tr>
</tbody>
</table>

---

<sup>22</sup> In one field conversation, a farm head told authors that *sovkhозes* in Tajikistan have always had profit sharing, like *kolkhozes*.


<sup>24</sup> Author was unable to obtain this act in country.
<table>
<thead>
<tr>
<th>Type of Enterprise</th>
<th>Sources of legal mandate</th>
<th>Operations</th>
<th>Legal Tenure Relations</th>
<th>Status (Statistics on arable hectares adopted from SOFRECO Inception Report)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gozkhоз</td>
<td>Decree No. 621</td>
<td>Same as sovkhoz. Specialized forms of production only.</td>
<td>State is land and property holder, no use rights distributed (except in case of partial lease share, see LSE below). Rights of workers to leave with land or property shares are unclear and may be nonexistent.</td>
<td>&quot;Gozkhoz is a term few people in the field use or have heard of. See above, under &quot;Sovkhoz.&quot;&quot;</td>
</tr>
<tr>
<td>Production cooperative</td>
<td>USSR Law on Cooperation</td>
<td>Centralized production, accounting, marketing, tax payment. Managed by commission elected by members. Unlike kolkhozes and LSEs, individual brigades have no right to a return based on the amount of production over a quota. Profit sharing is on the basis of production alone. Brigade leaders have limited role of accounting and “worker incentive.” All salaries are paid directly</td>
<td>Cooperative enterprise holds the primary use rights to the land. Individuals holding land and property shares contribute them as entrance participatory shares. Right of individual members to withdraw these shares to start dekhan farms is unclear. Under the MOA “Recommendations,” members have the right to withdraw either with shares in kind or in cash, depending on the coop charter.</td>
<td>29,000 ha’s (2.9% of arable ha’s)</td>
</tr>
<tr>
<td></td>
<td>Tajik Law on Cooperation</td>
<td></td>
<td></td>
<td>(1) At the cooperative we visited, management. Told us that workers had no right to withdraw a land share to start a dekhan farm without management’s approval. (2) Although a “commission” had been elected by the general meeting, decisions for the cooperative were made almost exclusively by the 2 directors (3) Workers/ members also provided labor for elite cotton</td>
</tr>
<tr>
<td></td>
<td>Land reform laws (allow cooperative as one form of restructure from kolkhoz or sovkhoz)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

25 Workers do not hold any certificate or “paper” for their right to the .40 ha plots. The rights were “registered in the cooperative’s books.” All but 2 or 3 workers at this cooperative were women, and many of them very young. Although all workers are technically members, not clear whether all had right to .40 ha wheat plot and right to profit sharing.
<table>
<thead>
<tr>
<th>Type of Enterprise</th>
<th>Sources of legal mandate</th>
<th>Operations</th>
<th>Legal Tenure Relations</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>“private” enterprise”</td>
<td>MOA Recommendations on farm reorganization (1997)</td>
<td>from the center. Production and tenure relations may be hybrid: one cooperative we visited had different systems in place for cotton, grape and wheat production. Cotton production and marketing was done collectively, according to the above model. Grape production was done collectively but the harvest was distributed among the members who used it for consumption or marketed it individually. Wheat production was “private:” each member had a .40 ha. plot for individual wheat production.25 The families cultivated, harvested and marketed the wheat crops independently (although borrowed the cooperative’s machinery).</td>
<td>JSC enterprise holds primary use rights to the land. Individual holders of land and property shares contribute them to the charter capital of the JSC. Right of individual members to withdraw land shares to start dekhan farms is unclear. MOA “Recommendations” (1997) state that members who contributed charter capital in the form of a land share retain the right to withdraw that share in kind unless stated otherwise in the</td>
<td>87,000 ha’s (8.7 % of all arable ha’s) At the JSC we visited, individuals did have the right to withdraw land and property shares to start dekhan farms. This JSC was SOFRECO pilot project, however.</td>
</tr>
<tr>
<td>Joint Stock Company (JSC)</td>
<td>1991 JSC Law (amended 1996) Land reform laws (allow cooperative as one form of restructure from kolkhoz or sovkhoz to “private” enterprise”)</td>
<td>Centralized production, accounting, marketing, tax payment, salary payment. Managed by commission elected by members. Production quotas established. Profit sharing is based on production. Brigades are entitled to keep profits on amount of production over quota. Management may have the right to penalize workers producing under-quota by deducting from their property shares.</td>
<td>Status</td>
<td>(Statistics on arable hectares adopted from SOFRECO Inception Report)</td>
</tr>
<tr>
<td>Type of Enterprise</td>
<td>Sources of legal mandate</td>
<td>Operations</td>
<td>Legal Tenure Relations</td>
<td>Status (Statistics on arable hectares adopted from SOFRECO Inception Report)</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Lease Share Enterprise (LSE)</td>
<td>Law on Lease Land Code Land Reform Laws But note that the MOA “Recommendations” on Farm Reorganization do not include LSE’s as a viable form of restructured enterprise.</td>
<td>Lease enterprise (sovkhoz, kolkhoz or former sovkhoz or kolkhoz) contracts with a group of workers to “rent” the land and assets of the enterprise. The group, called a LSE, must pay the enterprise a pre-established amount of the production, based on the estimated yield per hectare. The enterprise markets this product. From the proceeds, it covers marketing costs, salaries, land taxes and other working expenses depending on the agreement. The lease collective is entitled to the proceeds of any amount of production exceeding the quota. In some cases it keeps any excess and markets it itself. In other cases it delivers all product to the enterprise and receives back the proceeds from the amount delivered in excess of quota. Lease collectives are also entitled to a profit share at the end of the year from the amount they have contributed as quota. Lease collectives, rather than the lease State is land owner. Kolkhoz is primary holder of land use rights (primary tenant). Lease collective is secondary tenant. Right of individual members to withdraw land and property shares to start dekhan farms is unclear.</td>
<td>charter. In closed JSC, members can transfer shares within enterprise only. 240,000 ha’s (24% arable ha’s) In the event of bad yields due to poor conditions, several members of lease collectives we interviewed said that the lease enterprise had not required the full amount (if any) of “rental” payment. (In these cases, risk not really transferred.) At the LSE we visited, more lease collectives existed now than brigades in the past. (45 brigades were now 80 lease collectives)</td>
<td></td>
</tr>
<tr>
<td>Type of Enterprise</td>
<td>Sources of legal mandate</td>
<td>Operations</td>
<td>Legal Tenure Relations</td>
<td>Status (Statistics on arable hectares adopted from SOFRECO Inception Report)</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------</td>
<td>------------</td>
<td>------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Dekhan Farm</td>
<td>Law on Dekhan Farms, accompanying regulations, Land Code, Land Reform Laws</td>
<td>Individual: Single family produces and markets independently. Family: Two or more related families produce and market jointly. They may be very large, extended families consisting of 30 or members. They appoint one “head,” who becomes the official holder of the farm. Collective: Two or more unrelated families produce and market jointly. They appoint one “head,” who becomes the official holder of the farm. With both family and collective dekhans, decisions and operations are centralized with the head of the farm. Production is managed by a commission elected by the heads of the lease collectives.</td>
<td>Head of the dekhan farm is the holder of the life-long inheritable tenure right to the entire land area of the farm. Right of individual members to withdraw land and property shares to start independent dekhan farms is unclear. (Note the perception in field and among officials that rights could depend on whether dekhan farm was formed before or after Decree No. 522. This perception seems to disregard the fact that each member’s right to a land share was established in 1992.)</td>
<td>50,000 ha’s total (5% of all arable ha’s) Wide variety of perceptions among dekhan farm heads and both national and local officials about rights of the members of a dekhan farm to land and property shares. Of all of the restructured farm types, only dekhan farms reported an increase in yields relative to the sovkhozes and kolkhozes. Production of cotton (generally on larger dekhan farms only) and wheat was reported to be at least 150% that on unrestructured farms.</td>
</tr>
<tr>
<td>Type of Enterprise</td>
<td>Sources of legal mandate</td>
<td>Operations</td>
<td>Legal Tenure Relations</td>
<td>Status (Statistics on arable hectares adopted from SOFRECO Inception Report)</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Subsidiary household plots | Land Reform Law of 1992, Land Code, Presidential Decrees No. 342 and 874 on assignment of 50,000 and 25,000 (respectively) hectares of land to private household plots |delivered to the head who markets it and returns salaries to the member workers.  
Governance of the family or collective *dekhan*, other than the appointment of a “head,” is not regulated.  
Associations: May be several types: (1) private groups of *dekhan* farms (often small ones) who join together for collective decisions and operations which can include production, marketing, and input procurement; (2) state-sponsored *dekhan* farm associations at the *rayon*, *oblast* and national levels. |Holders have right to life-long inheritable tenure. They have no right to purchase, sale or lease the plots, and no right to build on them.  
According to MOA “Recommendations” (1997), holders of the rights to a household plot are entitled to register these rights and receive a Land Use Certificate. |Total land allocated to household plots is now 150,000 ha’s. According to the regulations accompanying Decree No. 342, this represents approximately 18% of the arable land in Tajikistan.  
Allocation of “presidential fund” land has raised several issues: (1) fragmentation of household plots into several small, geographically separate units; and (2) distribution problems stemming from corruption and failure to incorporate a continuing influx of refugee families into calculations for allocation from the current fund.  
Families on all farm types|
<table>
<thead>
<tr>
<th>Type of Enterprise</th>
<th>Sources of legal mandate</th>
<th>Operations</th>
<th>Legal Tenure Relations</th>
<th>Status (Statistics on arable hectares adopted from SOFRECO Inception Report)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>unanimously reported the need and desire for larger household plots.</td>
</tr>
</tbody>
</table>
ISSUES

I. Private Ownership

Most countries of the former Soviet Union have adopted constitutions or legislation that either: (1) recognize private ownership as a permissible form of tenure; or (2) recognize a “bundle of rights” resembling those customarily associated with private ownership.\(^{26}\) Unfortunately Tajikistan does neither.

A. Constitutional prohibition on private ownership

**Impediment**

Under the Tajik Constitution land is owned exclusively by the state.\(^{27}\) Private ownership is thus not permitted.

**Recommendation**

- Allow for private ownership of agricultural land in the constitution and land legislation. This private ownership should expressly encompass the full bundle of rights, including secure land tenure,\(^{28}\) the right to sell land for a freely negotiated price, and the right to lease, mortgage, and pass land by gift and inheritance.\(^{29}\)

B. Failure to define ownership-like rights in the law

**Impediment**

Tajik legislation does not provide any form of tenure which encompasses the above-mentioned “bundle of rights.” The Land Code, Articles 14-17, sets forth four types of land tenure: (1) land tenure of unlimited duration (available to agricultural enterprises other than dekhan farms); (2) life-long inheritable tenure (available to individuals for household plots and dekhan farms); (3) terminal land use (available to “secondary users” for public use only); and (4) land lease (available to both legal and physical persons who are “secondary users”).

While life-long inheritable tenure and land tenure of unlimited duration do provide long-term possessory rights, these rights are not secure and are not fully transferable. Substantial restrictions on transaction rights (see Section II, “Land Transactions,” infra) still exist, and the

---

\(^{26}\) This bundle of land rights normally includes: (1) secure long-term or permanent possessory rights; (2) the ability to freely transfer such possessory rights (either permanently or temporarily) through sale, lease, gift, and inheritance; (3) the right to crops, lease payments, or other revenue generated by the land; (4) minimal restraints on the use of land; and (5) the ability to use land as collateral in acquiring capital.

\(^{27}\) Constitution of the Republic of Tajikistan [Const.] art. 13.

\(^{28}\) See Section VII on Land Use and Management, *infra.*

\(^{29}\) See Section II on Land Transactions, *infra.*
Tajik government retains expansive and continual power to interfere with individuals’ tenure rights (see Section VII, “Land Use and Management,” infra).

**Recommendation**

- If the open establishment of private ownership in the law is not possible for political or other reasons, then owner-like rights must be established and strengthened within the context of current tenure regimes. Taking life-long inheritable possession as an example, legislation should allow holders of such tenure to freely sell, lease, give, or pass by inheritance their rights, to mortgage their rights, and to possess their land free of fears of over-regulation or confiscation. The specifics of such legislation are discussed in the following sections on “Land Transactions” and “Land Use and Management.”

**II. Land Transactions**

One of the most important indicia of ownership-like rights to land is the ability to transfer these rights. The right of private actors to decide for themselves whether, how, and to whom to allocate land is a crucial ingredient of the land market, for it places the power over allocation in the hands of those most knowledgeable about the land in question, and with the most vested interest in effective allocation of such land.\(^{30}\) The legal impediments to transferring primary land use rights in Tajikistan are as follows.

**A. The Land Code prohibits purchase, sale or other transfer of land use rights**

### Impediment

Article 104 of the Land Code prohibits the private transfer of use rights to a land plot by purchase, sale, gift, or “unauthorized swap.”\(^{31}\) Prohibition of land sales is the most direct and onerous of the impediments to land transactions existing in Tajikistan. Simply put, if land rights cannot legally be sold, then the efficient allocation of land for improved productivity will be severely circumscribed. Finally, a prohibition on sale renders mortgage of primary use rights largely impossible, since no lender will take land as collateral if that land cannot be sold to recover the loan amount in the event of a loan default.

The one exception to the prohibition on transfer of primary land use rights by sale, gift or barter is set forth in Article 73 of the Land Code. This Article allows a dekhan farmer who loses his ability to work or prepares to retire on pension to transfer his tenant rights to either:

---


\(^{31}\) Land Code at art. 104. The Law on Lease, however, leaves open the door to future purchase and sale transactions. Article 10, titled “Purchase of Leased Property,” allows the tenant to purchase leased property with the landlord’s consent, subject to restrictions on purchase and sale established in the “Laws of Tajikistan.” Also, Article 72 of the Land Code refers implicitly to the sale of (private) land by public authorities.
(1) a family member working on the dekhan farm; or, if no such person exists, to (2) any other person with the “necessary qualifications.”

**Recommendation**

- Adopt rules that expressly allow the right to buy and sell the primary use rights to land, including agricultural land, which is part of the right of ownership in all developed market economies. For example, if the primary use right is a long-term lease from the state to a citizen, that citizen should be able to sell that lease right to another party.

**B. Limit on lease payments to the land tax rate**

**Impediment**

Under Article 26 of the Land Code, lease payments may not exceed land tax rates, which are generally low. While this provision may protect lease collectives from abusive lease rates charged by Lease Share Enterprises, it also undermines any incentive to lease out privately held land. In addition, artificially low lease payments prevent the market from allocating land to its economically most productive use. Because the primary use right holder is prevented from increasing the lease amount, the inefficient lessee has no incentive to increase his or her efficiency. Similarly, a more efficient user has no incentive or ability to outbid the inefficient lessee for the right to lease the land.

**Recommendation**

- Remove the provision in the Land Code limiting rental payments to land tax rates. Allocating primary use rights to individual members of sovkhozes, kolkhozes and Lease Share Enterprises will remove the necessity to protect farm workers as tenants of farm management through this type of provision. This change will also allow a lease market to begin to function.

**C. Forced allocation of a percentage of the lease payment to the state**

**Impediment**

The Law on Lease entitles the state to extract a percentage of private lease payments, not to exceed the commercial interest rate, as a sort of tax for “public needs.”\(^\text{32}\) This provision, when considered with the requirements of the land tax, could amount to a substantial burden on the private lease market.

---

Recommendation

• Remove the provision in the Law on Lease that allows for a state tax on private leases. Focus efforts to generate revenues on a land tax.

D. Length of lease term

Impediment

The Land Code and the Law on Lease contain conflicting provisions on the maximum lease term from a private individual. While the Land Code stipulates a 20-year maximum,33 the Law on Lease stipulates a 5-year maximum.34 Conventional land market theory holds that private parties should have the freedom to decide for how long they wish to lease out their land, whether for 2 years or 50 years. However, problems can arise when applying this theory into countries such as Tajikistan. As discussed earlier in this report, two fundamental requirements of an effective land reform in Tajikistan are: (1) the transfer of primary land use rights to the kolkhoz and sovkhoz workers; and (2) the break-up of collective enterprises into smaller, more efficient dekhan farms. It is fair to say that these kolkhoz and sovkhoz workers will for some time have little if any knowledge of their land rights, what those rights might be worth in the future, and that they will continue to be subservient to the wishes of the collective enterprise management and local administration for years to come. It is quite likely that, as soon as workers receive their primary land use rights,35 the collective enterprise management will attempt to conclude long term lease contracts for minimal payment, thus stunting the process of farm break-up and continuing the economic problems in the agrarian sector. The threat of this occurrence significantly outweighs any benefit to be gained from allowing long-term leases at this point in the land reform process.

Recommendation

• Reconcile the Land Code with the Law on Lease to limit lease terms to a maximum of five years.

E. Tenant’s right to be reimbursed for improvements to the land made with implicit landlord’s consent, and tenant’s right to renew lease at the end of the tenancy

Impediment

33 Land Code at art. 17.
34 Law on Leasing at art. 12.1, which also sets the minimum lease term at one crop rotation.
35 See Section IV on “Land Shares,” supra, discussing the importance of using land shares as a tool to transfer primary land use rights, including the right to lease out, from the sovkhoz or kolkhoz to the individual farm members.
First, the Lease Law states that the terms of a lease will be automatically renewed at the end of the lease term unless at least one party “refuses to continue.” This presumption should be reversed; renewal of a lease term should require positive indication by both parties that they wish to do this.

Second, the Lease Law gives the tenant the right to be compensated for any improvements to the land that cannot be separated from the land at the end of the lease term, unless the lease contract specifically provides to the contrary. This provision raises serious possibilities that farm leaders, once they are the tenants rather than the lessors, may replant trees or make other “improvements” to land, or put new tires on a tractor, and then claim that the cash-strapped lessors/farm workers must pay for these improvements before withdrawing land or property even after the end of the lease period. The practical effect could be to turn even a “one-year” lease into an involuntary perpetual commitment.

**Recommendations**

- Remove provisions from lease law on automatic lease renewal. Allow private parties to determine their own renewal terms, or require through legislation a positive indication by both parties for lease renewal.

- Delete provisions in the lease law that require the lessor to reimburse the lessee, at the end of the lease period, for improvements, and insert new provisions that provide that no reimbursement for improvements will be required, either during or after the lease period, unless specifically stipulated by both parties in the lease agreement.

**F. Requirement to register private lease transactions with the state land use register**

**Impediment**

The Land Code states that rental contracts and the “right to short-term land tenure” are subject to State registration in the land use register. While it may be reasonable to require registration of long-term leases, this should be done at a local level and for a nominal fee only in order to keep transaction costs to a minimum.

**Recommendations**

- Eliminate the requirement that short-term leases be registered.

- Provide for registration of long-term leases at a specified, nominal fee that is payable in kind.

---

36 The Law on Lease, art. 12.2, gives the tenant the right to renew the lease at the end of the lease term. It is unclear whether this right is automatic, presumed, or only set forth to clarify that the two parties to a lease can mutually decide to extend or renew the period. Under art. 12.3, the lease is considered renewed at the end of the term unless at least one party refuses to continue.

37 Law on Leasing at art. 9.2.
G. Lack of procedures and model forms for executing leases.

Impediment

Access to the private lease market is inhibited by a lack of detailed procedures and model forms to guide private parties through lease transactions. It is likely that Tajikistan will have to develop both to realize an effective lease market.

Recommendations

• Adopt procedures to serve as a roadmap for the lessor and lessee in carrying out a lease transaction. The procedures would largely restate what clauses are needed in the contract itself. Additionally, the procedures would contain points of law the parties would need to be aware of when concluding their agreement.38

• Adopt model lease contracts.

III. Privatization

Allocation of rights to possess, use, and transfer land to individuals is the fundamental component needed to effectively restructure the kolkhozes and sovkhozes, as well as to increase the economic well-being of these citizens.

A. Sovkhozes are not being restructured

Impediment

Many of the sovkhozes have not been restructured for two primary reasons. First, the law exempts from privatization sovkhozes engaged in a broad range of activities, including seed production and cattle breeding.39 These activities are commonly carried out by private actors in developed market economies. If the Tajik government wishes to retain some state-run
farms for seed and cattle research and development, such activities are needed only on a tiny fraction of the arable land in the country.

Second, the legal mandate to restructure sovkhozes has not been carried out. Presidential Decree No. 621 of October, 1995 sets forth three possible organizational forms for the restructuring of sovkhozes. They are:

1. Unprofitable sovkhozes are to be restructured into “lease-share enterprises,” cooperatives, dekhan farms and other forms corresponding with a market economy (Art. 1);
2. Profitable sovkhozes are to be converted into kolkhozes (Art. 2); and
3. Sovkhozes engaged in specialized forms of production are renamed “goskhozes.”

Following this decree, “sovkhозы” technically ceased to exist. According to authors' field research, however, sovkhozes (referred to as such) continue to exist in abundance. This creates confusion, since some land reform laws mention only kolkhozes as the subject of restructuring and distribution of land share rights, leaving workers on the sovkhozes that have not yet converted into kolkhozes in a legal limbo. Presidential Decree No. 522, for example, is directed -- except for one reference to sovkhozes -- to allotment of shares to workers of kolkhozes.

For the above reasons, many sovkhozes have escaped restructuring, excluding a significant portion of the farm land in the Republic from reform. The total amount of arable land in sovkhozes (or their equivalents) as of 1997 was 34%. Authors visited one sovkhoz containing 6,000 hectares, and interviewed a number of people in rural areas who referred to the farms they worked on as “sovkhозы.”

Recommendations

- Strictly limit the legal categories of specialized agricultural enterprises exempt from privatization. Include only those categories where public control is essential. Retain only that land on specialized enterprises actually used for the limited essential public purpose.
- Limit the role of local administrations in awarding exemptions for specialized sovkhozes, and subject all exemptions to review at the central government level for conformity with the legal standards established for the exemption.

---

40 We did not find “goskhoz” a commonly used or recognized term in the field.
41 SOFRECO INCEPTION REPORT, supra note 23
42 Note that the MOA “Recommendations” on Farm Reorganization state that the list of exempt state enterprises will be kept by “the government.” Even under the assumption that this reference is to the central government rather than to local authorities, the degree of influence held by local officials and farm managers in compiling this list is unclear.
• Through amendments and future laws, apply rights of workers to land and property shares equally to workers on those sovkhozes not falling within a specific category of exemption.

B. Private use rights to farmland are not held by individuals

Impediment

Primary use rights to the land of sovkhozes and kolkhozes have not yet been transferred to farm members or workers. The land share rights that have been allocated resemble more closely a “license” to start a dekhan farm than a real, present interest in the land. Primary current user rights to the land and property continue to rest with the management of either the sovkhoz or kolkhoz.

This concept is embedded in the land laws. First, the Land Code and reform laws contemplate the use of a land share for the limited purpose of starting a dekhan farm, but fail to establish in the shares any sort of realizable present interest in the land.\(^{43}\) Second, the Land Code does not mention “land share holders” in the list of persons who are entitled to either permanent use rights or life-long inheritable tenure rights. Third, the laws do not provide for transaction of the shares, except that the 1992 Law “On Dekhan Farms” states that such shares may be devised.\(^{44}\)

One reflection of the failure to transfer primary land use rights to farm members is the existence of the Lease Share Enterprise. To the extent that Lease Share Enterprises (collectives) require payment from lease collectives (brigades) for the right to use the land,\(^{45}\) they are incompatible with privatized land use rights. Where real, present rights to the land assets of an agricultural enterprise have been transferred to private individuals, the enterprise itself loses its legal interest to continue to “lease out” the land. Where a real transfer has occurred, the right to lease out the land belongs to the farm members, not to the enterprise. Instead of a former collective (LSE) leasing out land to brigade (lease collective), individual members of the brigade now hold the primary rights to the land in land shares. Unless former collective members permanently contribute these shares to the “reorganized” agricultural enterprise, they—not the collective or “LSE”—have the right to either use or lease out the land.

\(^{43}\) Land Code at art. 69-73.

\(^{44}\) Law on Dekhan Farms at art. 10. References to the right to inherit land shares is dropped from legislation after the 1992 law, but picked up again by the Ministry of Agriculture’s Recommendations on Farm Reorganization (1997) at art. 3.2. The Recommendations also suggest that share holders have the right to trade or purchase share rights among themselves for the purpose of obtaining a land plot contiguous to the plots of other members who are withdrawing together to start a dekhan farm. See art. “e,” preliminary section. A later provision in the Recommendations, however, explicitly forbids the sale of land shares, as opposed to property shares, among farm members. See art. 3.2. Neither farmers nor officials interviewed by authors were aware of any right of a land share holder to devise the share without first applying for and receiving the right to a dekhan farm.

\(^{45}\) The amount of the “rental payment” that can be attributed to lease payments for the right to use the land is difficult to discern, and may be limited to the land tax by the Land Code. In this case, it should not be considered a “rental payment” at all, but rather a means of accommodating continued centralized production and distribution.
Recommendations

• Amend the Land Code to include “land share holders” in the list of persons entitled to life-long inheritable tenure.

• Immediately legislate that land shares guarantee primary land use rights to their holders. Land shares should then be issued to members of all forms of agricultural enterprises. Allocation of these shares would render the share holders, rather than the agricultural enterprise, the legally registered holder of the primary land use rights.

• Allow land shares to be passed by inheritance, or to be sold, leased, or given.

• Allow land share owners to exchange their shares for land in-kind, without requiring permission from the farm management, for use in starting a dekhan farm, or for sale or lease to a dekhan farm.

IV. Land Shares

A. Heads of dekhan farms hold the rights to all the land on the farm

Impediment

Dekhan farms cultivate roughly 5% of all arable land in Tajikistan. The use rights to the land of dekhan farms are generally held in life-long inheritable tenure by the dekhan farm head. The dekhan farm workers have no land rights. In many cases hundreds of hectares have been granted to dekhan farms for use, thus running the risk of creating latifundia, which largely benefit only the land right holders.

Recommendations

• All long-term land rights granted for use on dekhan farms hereafter should be granted to both the leaders and workers on the farm, especially if a large amount of land is involved.

46 The fact that distribution of land shares has not, as of yet, encompassed a transfer of primary use rights to individuals renders the process of reforming the lease laws for a land market extremely problematic. First, the current landlord is always the agricultural enterprise, which has a de facto use right; the tenant is the individual farm member/ shareholder. As soon as the laws are reformed to incorporate primary use rights into allocation and distribution of land shares, this relationship will be reversed. A second, related result is that restrictions in the current lease laws that may impede transactions in a nascent lease market may also serve to protect the rights of existing lease hold collectives in Lease Share Enterprises. Following through with the recommendation in Section VI, supra, to cease to consider Lease Share Enterprises as “restructured” farms and to proceed as quickly as possible with their privatization and break-up into dekhan farms, would simplify greatly the process of reforming the lease laws.

47 A common objection in to private ownership in the former Soviet Union is the concern that wealthy urbanites will buy up large amounts of cheap farmland, thus creating latifundia and relegating the workers to virtual serfdom. Historically, however, formation of large estates has generally been carried out through land grants from the government to influential individuals, not through the private market. See HANS P. BNSWANGER ET AL., POWER, DISTORTIONS, REVOLT AND REFORM IN AGRICULTURAL LAND RELATIONS (1993).
• For land already granted to dekhan farm heads in life-long inheritable tenure, the legality of such grants should be examined in an attempt to transfer some of these rights to the workers on the dekhan farm.

**B. The size of the land shares has not been determined on all agricultural enterprises**

**Impediment**

The size of land shares has not been uniformly determined. The Ministry of Agriculture's Recommendations on Farm Reorganization delegate authority to determine land share sizes to the rayon Land Committee, and seem to state that the size of a land share on a given farm should be determined by dividing a figure representing the total amount of arable land equally among the number of persons entitled to receive shares.

As of yet, however, the share sizes have not been determined on all enterprises and workers are at times unaware of the share sizes on farms where they have been determined. According to fieldwork conducted by authors, the extent to which farm members and officials recognize the existence or size of land shares varies greatly. In some cases workers knew what the size of their shares were, but in many cases they did not. In other cases workers did not even know they were entitled to a land share.

One senior official reported hesitancy in determining and publishing share sizes due to the requirement that the shares on a given enterprise be equal in size. He worried that this requirement would force the re-allocation of land between brigades which could foster clan or ethnic tension and possibly violence. To avoid this outcome, and to remove the threat of it as an impediment to land reform implementation, one possibility would be to determine share sizes by brigade, within broader maximums and minimums established for the farm as a whole.

**Recommendations**

• Clarify rules set forth in Ministry of Agriculture’s Recommendations for determining share sizes and use them to grant a relatively equal share size to every person entitled to a share on an enterprise.

• In the alternative, set a minimum and maximum share size for the enterprise and allow for variances in share sizes between brigades, based on the total arable land farmed by the brigade divided by the persons in the brigade entitled to land shares.

---

48 This figure is determined by assigning different ratios to irrigated, non-irrigated and pasture land to calculate all land into a “conventional hectare standard.” The exact methods recommended are unclear due to incoherence of examples used in the (English version) of the Recommendations.

49 One senior ranking official in the national government informed authors that many workers were not aware of the size of their shares.

50 Note that “requirement” is based on a perception of the MOA Recommendations on Kolkhozes and Sovkhozes that may or may not be accurate. Furthermore, the Recommendations are not binding.
C. Ambiguous legal rules about whether all rayon residents or enterprise members only are entitled to land shares

Impediment

The law seems to allow for two possibilities in share allocation: (1) share distribution only to the members of kolkhozes and sovkhozes; and (2) share distribution to all residents of a rayon regardless of whether or not they work on an enterprise. Support for the first possibility is found in the language in the Land Code (Article 71) and the regulations on Dekhan Farming (Article 1),51 which state that lands of sovkhozes and kolkhozes shall be divided into conditional shares (for the purpose of establishing dekhan farms). Support for the second possibility derives from provisions in the Dekhan Farm Law (Article 5) and in the regulations on Dekhan Farming (Article 2.3) which state that every citizen, whether an enterprise member or other resident of the rayon, may apply for a dekhan farm.

Through field interviews, authors discovered that in some rayons all residents, including factory workers and other people who had never worked on an enterprise, received a land share. Farm members were entitled to apply for their share from the enterprise land, while other residents could apply for their share from the khukumat’s reserve fund. In at least one rayon, this reserve fund was over 2,000 hectares and had been formed from kolkhozes and sovkhozes during farm “restructure.” In other rayons, only the workers on kolkhozes and sovkhozes were allocated land shares.

Recommendation

• Clarify legislation to limit initial allocations of land shares to enterprise members and pensioners. Other residents of the rayon who wish to start dekhan farms can apply for land from the khukumat reserve fund.

D. Unclear legislative mandate on registration and certification of land shares

Impediment

According to the Law on Dekhan Farms, the shares shall be “certified by proper documentation.”52 The Recommendations on Farm Reorganization issued by the Ministry of Agriculture in 1997 also called for the certification of land share rights.53 But Presidential Decree No. 1021, “On Ensuring the Right to Land Use,” issued in 1998, does not include land share holders in the list of persons entitled to receive a Land Use Certificate.

51 Presidential Decree No. 699 “Regulations on Dekhan Farming in the Republic of Tajikistan” [Decree 699] (October 1993).

52 Law on Dekhan Farms at art. 10.

53 “Each possessor of a land or property share shall receive a certificate of ownership.” See art. “d,” preliminary section, Recommendations on Kolkhozes and Sovkhozes.
Authors found no case in which a certificate for a land share been issued, and no knowledge by workers or local officials that such a certificate could or should be issued.

**Recommendations**

- Amend current reform legislation to reflect the requirement that land shares be certified, as set forth in the Dekhan Farm Law and the 1997 Recommendations on Farm Reorganization.

- Legislate the distribution of land share certificates to the heads of all households in all forms of agricultural enterprises. The certificates should list the names of all rights holders in that family.

**E. Withdrawal of land shares in-kind**

**Impediment**

The laws and regulations fail to provide any procedure with objective standards for the demarcation of a land plot in the event that an individual or group of individuals decides to withdraw land shares from a large agricultural enterprise to start a dekhan farm, when the enterprise is not undergoing comprehensive restructuring. In the absence of objective standards, aspiring dekhan farmers may be given land of poor quality or location, or they may be stopped from withdrawing at all by opposing enterprise managers.

**Recommendation**

- A procedure for allocating land shares in-kind should be introduced which substantially ensures that the withdrawing land share owner receives land of average quality and location. One such possible procedure is as follows: An individual land share owner (or small group of owners) and a representative of the owners remaining on the enterprise take alternating turns proposing a field on which the withdrawing owner’s land share will be demarcated. If one side rejects the other side’s proposal of a particular field, that field is removed from the negotiation. The process continues until one side accepts the other side’s proposal, or until only one field is left. At that point, the land plot or plots are demarcated in a contiguous area on the edge of the selected field.\textsuperscript{54}

**V. Shares to non-land assets (property shares)**

**A. Legal recognition of rights to property shares in both kolkhozes and sovkhozes**

**Impediment**

\textsuperscript{54} This procedure was adopted for use in Vladimir Oblast, Russia.
Decree No. 522 sets forth collective farm members’ rights to obtain and withdraw a share of the farm’s non-land assets. 55 This decree extends property share rights to present employees at the time of the reorganization, pensioners, persons temporarily absent, disabled persons, and others. The collective body may also choose to extend the right to a property share to persons who were laid off after January 1, 1993. Decree No. 522 only specifically addresses property share rights on kolkhozes, and not on sovkhozes. Because some enterprises have not converted from sovkhozes to kolkhozes per Decree 522,56 however, the property share rights of many workers remain unclear. Workers at farm enterprises that technically remain “sovkhazes” may not be legally entitled to a property share unless or until their enterprise converts to a kolkhoz.

Recommendation

- Clarify procedures and regulations for allocating and distributing property shares, especially to members of sovkhozes.

B. Farm members are often unable to withdraw their property shares.

Impediment

Authors encountered a widespread failure of kolkhozes and sovkhozes to distribute property shares either to current workers or to allot them in-kind to workers withdrawing to start dekhan farms. While there is at least some acknowledgment of a right to a property share for workers who remain on the kolkhoz (in whatever its current, collective form),57 the majority of dekhan farms interviewed by authors had not received a property share from their former collective. Some interviewees noted this result followed from the legal responsibility of restructured enterprises to adopt their share of the old farm’s debt burden.

The most striking finding was the denial by officials, sovkhoz workers and dekhan farmers who were former sovkhoz workers that sovkhoz workers were entitled to a property share at all. No dekhan farmers who came from sovkhozes interviewed by authors had received, or even believed they were entitled to receive, a property share. In one current dispute, a sovkhoz has asserted the failure of a group of dekhan farms to pay for the fruit trees on their land shares as grounds for re-possession of the land shares. The fruit trees, claims the sovkhoz, were property of the sovkhoz which had not been paid for by the farmers. In another situation, the head of a rayon khukumat and the director of a large lease share enterprise advised authors that, although the assets of the sovkhoz were transferred directly into the account of the Lease Share Enterprise, if and when the Lease Share Enterprise broke into dekhan farms the dekhan farms would have to pay for any property they took individually or

55 Decree No. 522, sec. 17; Annex 2 to Decree 522, sec. 12.
56 See discussion in Section III(A), supra. Decree 522 (June 25, 1996) commanded all sovkhozes convert to either kolkhozes or goskhozes. In reality, many large-scale enterprises (in addition to the already large percentage of farms exempted from privatization for “elite” production) have remained sovkhozes in name and operation.
57 In one instance, for example, a kolkhoz assisted a new dekhan farmer by providing inputs for the first two years of operation, “in lieu of” a property share.
jointly. And this, they said, was one of the reasons that Lease Share Enterprise members were reluctant to break up into dekhan farms.

**Recommendations**

- To the extent that lack of property shares is a function of assumption of the debt burden of the old enterprise by new private farmers, adopt a policy for debt write-off contingent upon break-up into smaller private farms.
- Embark on an information campaign to regional officials, enterprise management and workers on rights to property shares.
- Establish the legislative framework for creating and operating service cooperatives.
- Enhance enforcement of workers' rights to property shares.

**VI. Enterprise Restructuring**

**A. Complex bureaucratic, approval, and financial requirements impede applications for dekhan farms**

**Impediment**

The process for applying for the rights to a dekhan farm is set forth in the Regulations “On the Reorganization of the Agricultural Enterprises and Organizations.” According to this document, members of sovkhozes and kolkhozes must take the following steps to apply for a dekhan farm:

1. A citizen applies to the khukumat for allotment of land for a dekhan farm. The application must indicate the members of the future farm and the purposes for which it will be used. (Art. 2.1) Both farm members and other residents of the rayon may apply. (Art. 2.3)

2. Khukumat registers the application and sends it to the regional Land Reform and Tenure Department. (Art. 2.2)

3. The Land Reform Department considers the application for land allotment, draws up the land tenure documents and sends them back to the Khukumat with a recommendation. (Art. 2.4)

4. Citizens qualified in agriculture who live in the “given locality” have a priority right to the land. (Art. 2.4)

5. The Khukumat considers the application, along with recommendation from the Land Reform Department, and determines whether to allot the land. (Art. 1.1)

---

58 Decree No. 522.
6. If the Khukumat approves the application, the regional Land Reform Department maps the borders of the lot, indicating the [boundary] signs. Two copies of “the act” demarcating the land are drawn up and signed by head of the dekhan farm and by an executive from the regional Land Reform Department. The head of the dekhan farm keeps one copy and one is filed with the Land Reform Department. (Art. 1.2)

7. The regional Land Reform Department makes two copies of the State Act, which is then signed by the Khukumat and the chief of the Land Reform Department. One copy goes to the head of the dekhan farm and one stays with the Land Reform Department. (Art. 1.3)

8. The regional Land Reform Department registers the lands allotted to the dekhan farm in the land cadastre book.

These regulations reflect the three reasons cited by people in the field for not withdrawing from sovkhozes and kolkhozes to start dekhan farms: (1) an arduous bureaucratic process, requiring repeat visits to the rayon administration; (2) the multiple layers of requisite approval, from officials and especially from the sovkhoz or kolkhoz management; and (3) exorbitant fees. Actual costs, cited by dekhan farmers who already had their State Acts, ranged from free to between 40,000 and 400,000 Tajik Rubles. The dekhan farms interviewed said that they paid the costs little by little, at each step along the way. Perceived costs by members of kolkhozes and sovkhozes covered an equally broad range; in every instance the interviewee said that the cost would be “very high.” The lack of clear written rules about fees leads to a degree of discretion by local officials that is too broad, and facilitates both actual and perceived high costs that stifle interest in and formation of dekhan farms.

Note that impediments to starting and registering a dekhan farm are also impediments to privatization of large sovkhozes and kolkhozes, as the only way to realize a land or property share is through starting a dekhan farm.

**Recommendations**

- Simplify the dekhan farm application process to require the applicant to make only “one stop” at the rayon administration (khukumat).

---

59 One senior government official estimated that the sovkhoz or kolkhoz farm management initially rejects the application at least 60% of the time.
60 The only person who reported a waiver of application fees was an older man who attributed the waiver to his pensioner status.
61 Approximately $50 to $500.
62 These included one fee to apply to the khukumat, one fee for the mapping by the Land Committee, one fee for the State Act itself, and so on.
• Instead of requiring the approvals of all of the authorities (kolkhoz or sovkhoz management, jamoat, khukumat, Land Reform Commission, and the Land Committee), reduce the number of authorities with approval power (e.g., to farm management, khukumat, and Land Committee) and allow for approval by any one of these authorities to be sufficient.

• Provide for one low fee to cover all steps of the dekhan farm application process. Make this fee clearly visible in the regulations.

• Accompany all changes in laws and regulations with a campaign to inform workers of the process and costs involved with applying for a dekhan farm.

B. Cosmetic enterprise restructuring

Impediment

“Restructure” of sovkhozes and kolkhozes that does not embody a real transfer of assets to private individuals and break-up into smaller farm units serves only to side-track reform legislation and implementation. According to SOFRECO data, over 40% of the sovkhozes and kolkhozes have been “restructured” into lease share enterprises, joint stock companies, production cooperatives or dekhan farms, representing about 40% of the country’s arable land.63 Dekhan farms represent about 12% of this total area occupied by “restructured” farms. As field work and discussions with national government officials made clear, changes in farm structure have been largely cosmetic, except in the instance of dekhan farms. In most cases the former sovkhoz or kolkhoz has simply adopted a new corporate name and has carried on its operations just as it did as a sovkhoz or kolkhoz, realizing none of the gains in productivity and human resource development that accompany true enterprise privatization and break-up into smaller farms.64

One result of superficial restructure is that once an enterprise has been “reorganized,” it may be removed from the reach of further reform legislation aimed, for example, at guaranteeing the rights of all workers to real land and property shares. This has already resulted in ambiguities about the legal rights of the members of the restructured enterprises under reform

63 SOFRECO INCEPTION REPORT, supra note 23.

64 The following information is cited from Tim Hanstad, ARE SMALLER FARMS APPROPRIATE FOR FORMER SOVIET REPUBLICS?, (RDI Reports on Foreign Aid and Development #97, February 1998). Global comparative date demonstrates the productivity benefits from small farms. A World Bank study of Polish private farms found that small farms were more efficient than large farms over 20 hectares. Relative total factor productivity (TFP) was highest for farms of 10-15 hectares, but farms of 5-10 hectares and farms less than 5 hectares also showed higher TFP than farms over 20 hectares. Johan van Zyl, Bill R. Miller, & Andrew Parker, Agrarian Structure in Poland: The Myth of Large-Farm Superiority, World Bank Policy Research Working Paper 1596 (April 1996). A World Bank study on the higher efficiency of small versus large farms in Kenya found that output per hectare was 19 times higher and employment per hectare was 30 times higher on holdings under 0.5 hectare than on holdings over 8 hectares. World Bank, Kenya: Growth and Structural Change, Basic Economic Report, Africa Region (1983). Another study in India found that income per hectare on farms of less than 2 hectares was more than twice that on farms of over 10 hectares. R. Netting, Small Holders, Householders: Farm Families and the Ecology of Intensive, Sustainable Agriculture (1993). A 1990 study in Brazil found that net income per hectare consistently decreased as farm size increased. Net income per hectare for farms less than one hectare was almost 3 times greater than for farms between one and 10 hectares and nearly 30 times greater than for farms between 200 and 2,000 hectares. William Thiesenhusen & Jolyne Melmed-Sanjak, “Brazil’s Agrarian Structure: Changes from 1970 through 1990,” 18 World Development 402 (1990).
legislation on the rights of kolkhoz and sovkhoz members. (Article 3 of Decree No. 522, for example, sets forth the “unconditional right” of a worker in a “collective body” to withdraw his land plot without the consent of the collective management. Does this right apply to workers in reorganized enterprises such as lease share enterprises, joint-stock companies, or production cooperatives? Does it apply to workers in family dekhan farms?) Article 22 of Decree 522 contains a similar example of the confusion created by the fact that some enterprises have been restructured prior to the allocation of shares.
Recommendations

- Abolish all options for restructuring other than to dekhan farms. This would entail amending the reform laws to call for transformation of current sovkhozes and kolkhozes into dekhan farms only, rather than into lease share enterprises, joint-stock companies or agricultural cooperatives.

- Consider all current lease share enterprises, joint-stock companies and agricultural cooperatives to be “unreformed” enterprises; through amendment and future legislation apply all legal direction for reforms to these farms as well as to sovkhozes and kolkhozes.

- Establish a maximum area for each “restructured” enterprise, at a size that is considerably less than the current size of the largest “unrestructured” enterprises, yet still allows the workers broad leeway to determine farm size. This limit could be 500 or 1,000 hectares. Enterprises in any form that remained larger than this maximum limit would not be considered restructured.

- In combination with the above point, stipulate that management of non-exempt enterprises that remain greater than the specified size past a certain date will lose their management positions.

VII. Land Use and Management

Land tenure security requires more than the legal right to private land ownership; it also requires freedom from undue governmental interference with these rights. In Tajikistan, however, a dekhan farmer’s primary use right to land is subject to extensive monitoring, penalties, and possible termination by the government based on a wide array of actions or inactions. In addition, the government may confiscate privately held land rights for public purposes or to designate to another private party, as long as it compensates the original rights holder. (See Section X on Compulsory Acquisition, infra.)

The Land Code endows the Land Committee and the Ministry of Conservation of Natural Resources with the authority to monitor and enforce land use requirements.

65 The average farm size in the highly productive agriculture of North America and Western Europe is substantially less than 500 hectares.

66 Land Code at art. 40 (setting forth the grounds for termination of land tenure); id. at art. 104 (setting forth the penalties for various land use violations); Decree 522 at art. 26 (setting forth the following grounds for annulment of land rights to new farms: (1) failure to use the land for farming for a one year period; (2) failure to use the land for its “designated” use; (3) land use that diminishes soil productivity; and (4) other grounds as spelled out in the Land Code).

67 Land Code at art. 72. If an executive official decides to sell or transfer a plot of land to another citizen, enterprise or organization, the landholder is entitled to full compensation. (Note that the reference to sales is incongruous with the current legal prohibition on sales.)

68 Land Code at 59.
A. Confiscation of land for irrational or non-use

Impediment

According to the Land Code, the state may confiscate primary land use rights for allowing agricultural land to “lie idle” for a period of one year\(^{69}\) or for “irrational use,” defined as production at a level below the estimated average set forth in the cadastre.\(^{70}\) These rules reflect a lingering distrust of market forces, and a belief that bureaucrats can exercise better judgment over the use of land than private right-holders. While it may be agronomically or economically sensible for a dekan farmer to leave a portion of his land temporarily fallow or idle, the threats of fines and confiscation can impede private parties from making such a decision. Excessive grounds for government intervention in private agricultural land ownership in Tajikistan also increase the real and perceived risks associated with establishing a dekan farm, and so constitute disincentives for privatization and farm restructure. The greatest danger with regard to efficient land use and protection of land is not the actions of private owners, but the actions by or threat of actions by the state or local authorities that undermine confidence in private land rights.\(^{71}\)

Recommendations

- Legal provisions to facilitate the leasing-out of agricultural land that is unused or inefficiently cultivated would promote productivity without eliminating the holder’s primary use rights. The lease should only be mandated after local government assistance has been provided and sufficient notice has been given to the landowner. Voluntary leases are preferable. The lease should be short-term, or else terminable (after an initial guaranteed period) at the landowner’s option when he is prepared to resume farming the land; and the lease payment should go to the landowner.

- Adopt legal provisions allowing a forced sale of land rights only after formal notice, an opportunity to rectify, and a prior opportunity to lease. Proceeds of the sale should got to the landowner (failure to return the proceeds to the individual rights-holder would constitute confiscation severely undermining private land rights and arguably violating Article 32 of the Tajik Constitution).\(^{72}\)

- Protect against particular types of undesirable use by enacting specific regulations that reasonably define objectionable uses and describe the related policies to be promoted by way of environmental regulations and comprehensive land use planning.

\(^{69}\) Id. at art. 40(h).

\(^{70}\) Id. at art. 40(c).

\(^{71}\) Renee Giovarelli, “Land Use Regulation” in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN ECA COUNTRIES: A COMPARATIVE PERSPECTIVE, supra note 30, at 80.

\(^{72}\) Const. at art. 32 , “The taking of personal property for public needs by the State shall only be permitted pursuant to law, subject to the owner’s consent, and with full compensation for the value of such property.” It is unclear whether “personal property” includes private land rights.
• Where a lack of routine maintenance or other minor omission creates the irrational use, legal provisions allowing government action and a service charge levied on the landowner can provide for a reasonable solution.

B. Penalty for failure to fulfill obligation to bring plot into suitable condition for its designated use

Impediment

The Land Code sets forth the failure to fulfill the obligation to bring a land plot into “suitable condition for its appropriate use” as a land use violation worthy of a maximum penalty (for juridical persons) of 400-500 times the minimum wage.\(^73\) The suggestion implicit in this provision that the holders of primary land use rights be granted such rights contingent on their improving the land is problematic. This provision could be used, for example, to force new dekhan farmers to transform non-irrigated or pasture land from the state land reserve fund into irrigated crop land at their own expense, and under the threat of confiscation.

Recommendation

• Remove “failure to fulfill obligations to bring plot into suitable condition for its appropriate use” from the list of actions subject to penalty.

C. Grounds for termination of land use rights include use of techniques that damage the soil or degrade the environment

Impediment

Under Article 40(e) of the Land Code, use of techniques that can damage the soil or result in harm to the environment is considered legal grounds for termination of land use rights. While the state’s intent to reign in potentially damaging effects of one land user’s actions on lands held by private neighbors or the public is valid, these provisions are too broad to provide adequate notice to land rights-holders and ensure equitable administration.

Recommendations

• Promulgate clear guidelines for soil management and environmental responsibilities; allow fines for gross violations only.

• Monitor soil quality and condition pursuant to specifically defined use regulations and standards for fertilizers or other inputs. Where violations rise to the level of pollution or contamination, impose appropriate legal sanctions. Where violations fall short of this level, withhold government financial aid.

\(^73\) Land Code at art. 104.
• Adopt legal enactments that allow the government to charge the landowner for government action required to ameliorate soil, or to repair damages to public property caused by soil erosion. Such government action should only be allowed in severe cases and only after the landowner has been given adequate time and notice to correct the condition.

• Condition receipt of public agricultural benefits including subsidy payments, participation in soil and water quality programs, and tax incentives, on compliance with soil quality standards.

D. Severe penalties for land use violations coupled with a lack of procedural protections for the holder of primary land use rights

Impediment

Enforcement of land use regulations should provide for the maximum amount of tenure security possible. Both the penalties and the enforcement process should be fair and reasonable; neither should be used as a tool to repossess private land rights or to manipulate the holders of private land rights. The Tajik Land Code contains two troublesome provisions in this regard. First, the state is authorized to levy a penalty on the holder of private land rights without any prior warning or hearing. Second, the penalties for land use violations are excessive. The penalties for “juridical persons” are up to 500 times the average minimum wage, an amount that would be impossible for most dekhan farms to pay.\(^74\) Failure to rectify the violation can result in termination of tenure rights without compensation.\(^75\) This potential consequence creates tenure insecurity for the private rights holder as well as prospective purchasers and mortgagees.\(^76\)

Recommendations

• Provide for notice and/ or hearing to the primary holder of land use rights in the event of an infraction of land use rules, before levying a penalty.

• Allow the rights holder the opportunity to work with public agricultural support entities to devise and implement a compliance plan before levying penalties.

• Reduce the penalties for land use violations by “juridical persons;“ and/ or for first time offenders; and/ or for farmers holding under a specified amount of hectares.

• Eliminate land confiscation as a legal penalty for non-compliance with land use laws.

---

\(^74\) Dekhan farms are considered legal, or “juridical” persons under the Law on Dekhan Farms at art. 2.

\(^75\) The indemnification rights of a dekhan farmer, in the event land rights are terminated by the state for public use, sale or transfer, do not appear to extend to termination due to land use violations. See Land Code at art. 72.

\(^76\) Giovarelli, supra note 75, at 81.
VIII. Registration

An efficient land registration system is prerequisite to development of a functioning land market. Registration of land rights provides potential buyers or renters with a way of verifying that the rights they are prepared to purchase in fact belong to the seller, thereby reducing the risk of such transactions. Effective land registration systems can also provide security for banks to issue loans to owners of real estate in order to improve the productivity of the land, create an improved basis for a land tax, and improve land and public administration.

The primary rules regulating land registration in Tajikistan are set forth in the Land Code, articles 18-20, and the Regulations on Organizing of Dekhan Farming. According to these provisions, land registration falls under the jurisdiction of state and local Land Committees.

The basic tenets of registration include:

a) entering into the land use register information about the incoming landuser and a description of the piece of land including land category, utilization purpose, type of farming land, the size of the plot, boundaries, cadastre number and other characteristics; and

b) official registration and issuing of titles to land use . . . ; the title deeds must bear the registration number and an attached plan or drawing of the plot boundaries.

The following issues hinder the legal framework for land registration from fulfilling its role in facilitating land market transactions and providing the basis for mortgage.

A. The authority to govern both land registration and land regulation rests with a single agency

Impediment

The Land Code and other laws endow the Land Committee with authority to both regulate land use and register land. Separation of these functions, and placement of the land registration under the Ministry of Justice, would serve several purposes. First, it would facilitate the establishment of a streamlined legal registration system that is based on the tenets of title registration set forth above, rather than on the complex and unwieldy requirements of the physical cadastre system traditionally maintained by the “Land Inspection” department of the Land Committee has traditionally been in charge of. Second,

79 See supra section VI for a detailed analysis.
80 Land Code at Art. 18.
81 Id.
placing registration functions with the Ministry of Justice would acknowledge the judicial nature of the act of registration. Third, separating the two functions would avoid consolidation of considerable power over land in a single agency.

The Tajik government might consider allowing local governments to select the local office to undertake registration functions. That office, presumable the office currently undertaking registration, could then seek certification from the Ministry of Justice and if certified (according to criteria determined by the Ministry of Justice) come under the direction of the Ministry of Justice.

**Recommendation**

- Re-assign authority over land registration to the Ministry of Justice.
- Allow local governments to select an office to undertake registration functions, subject to certification by the Ministry of Justice.

**B. Registration requirements for dekhan farms are cumbersome**

**Impediment**

As discussed in detail in Section VI, supra, the requirements for registration of the rights to a dekhan farm are both cumbersome and costly for individual land rights holders. Furthermore, these regulations fail to set forth in sufficient detail the procedures for registration.

**Recommendations**

- See recommendations in Section VI for streamlining the registration process for dekhan farms.
- Clarify in the dekhan farm regulations that two separate types of registration are required. The first is the registration in the land registry of the dekhan farm member’s primary use rights to a land share or plot. The second is the registration of the dekhan farm as a business enterprise in a separate, business enterprise registry.
- Set registration fees at a fixed, low level to help support the operation and maintenance of the system. The goal should be to establish an administrative system that is economical enough to break even while keeping fees at a level that will not discourage transactions. Such fees may be based on the land value so that bigger transactions subsidize smaller ones, or they may be on a fixed basis.\(^\text{82}\)
- Limit the information contained in the registry to that which is absolutely essential, such as parcel descriptions, ownership, and other interests in the immovable property.

---

\(^{82}\) S.R. Simpson, Land Law and Registration, 301-302 (1976).
• Specific legislation should be drafted containing detailed rules and procedures governing land registration. See Appendix 2 for detailed recommendations.

C. Registry is not conclusive evidence of title

Impediment

Currently, the registration system in Tajikistan provides some evidence of who holds what land rights, but not conclusive evidence. Land registration systems that do not provide conclusive evidence of the land rights pertaining to a particular land parcel significantly lessen the benefits of land registration. Title registration that provides conclusive evidence of land rights makes land titles more reliable, and is normally simpler, more logical, and less costly. Under a land title registration system a certificate of title (or the register) provides conclusive evidence of the land rights pertaining to a particular parcel. A legal interest in land is not created or transferred until officials at the land registry office make a conclusive assessment of the current state of title.

The essence of such a land title registration system is the land register, which states the identity of the owners of the title. It also lists all encumbrances (easements, liens, mortgages, leases, covenants, and the like) to which that title is subject. With a few minor exceptions, the register’s statement as to the tenure rights is conclusive in a title registration system; that is, it is legally impossible for it to be incorrect. Of course, the responsible officials may make an error, vesting title in the wrong person or failing to include a valid encumbrance. However, the register is still legally binding. The victim of such a mistake loses her interest in the land, and has recourse only by the way of a claim for monetary compensation against the indemnity fund that the system operates for that purpose.83

The register should be maintained by a public official called the registrar. If encumbrances are added or removed, appropriate notations are made in the register. If an owner transfers his or her land, the deed is brought to the registry and the registrar makes a new entry on the register (in systems which use certificates, a new certificate is issued) in the name of the new owner. No historical search of title should be necessary or even relevant.84

The registrar should maintain files or books containing the originals or copies of all documents referred to on the land register so an examiner can review them. These files of books are usually indexed by parcel, permitting easy location of information relating to any particular parcel of land. A person (such as a prospective purchaser) wishing to learn the status of land rights concerning a particular parcel need only inspect the current land register. If that person wishes to go further and learn the details or the history of the land rights on that parcel, he or she may read and evaluate the documents referred to in the register, but this is not normally necessary. In such a system the title examination process is vastly simplified and there is no need to duplicate searches as successive transfers of the same

84 Id. at 829.
land occur. That is, only the most recent information is relevant; there is no need for the buyer, the buyer’s attorney, or a title insurance company to consult the whole history of land tenure on that parcel for every new transfer.

Kazakhstan’s registration decree is a good example of a legal enactment governing land title registration that explicitly states and clarifies that the land register provides conclusive evidence of the land rights pertaining to a particular land parcel. The presidential decree on land registration provides that rights to immovable property arise only after their registration.\(^85\) Registered rights to immovable property are deemed to be superior to unregistered rights that arise by contract or any other legal fact which may be a basis for such rights.\(^86\)

**Recommendations**

- Adopt legal rules which explicitly state that the land register is conclusive evidence of title.
- Provide that the register contain enough information and be organized in a fashion (for example, with a parcel or “tract” index, and not just a grantor-grantee index) so that it is relatively easy to determine the state of title for each parcel in the register.

**D. Lack of reliable compensation for losses caused by government error in registration**

**Impediment**

Tajik law does not address legal liability of the government for mistakes in the land registry, or the establishment of an assurance fund. Establishment of legal liability for material mistakes by the registration agency and an assurance fund to compensate those damaged by such mistakes are important components of most land title registration systems. Land registration laws should contain provisions specifying when the state is liable for registry errors. The laws can also provide for a state assurance fund to compensate those damaged by registration mistakes when the registration agency is liable. Assurance funds provide security to landowners by compensating parties who suffer damages due to mistakes by the registrar.\(^87\) The experience of most countries has shown that claims against the assurance fund are infrequent and insubstantial, although there are exceptions.


\(^{86}\) Id. at Art. 3.2.

\(^{87}\) See Theodore B. F. Ruoff, *An Englishman Looks at the Torrens System* (1957). Ruoff suggests that three principles are fundamental to the success of land title registration, one of which is the insurance principle: that is, that the registry compensate any party suffering damages as a result of mistake in the register. *Id.* at 13. The other two principles are: (1) The mirror principle, involving the proposition that the register reflects accurately and completely the current facts material to land title; and (2) The curtain principle which provides that the register is the sole source of information for potential purchasers who need not concern themselves with interests which lie behind the curtain. *Id.* at 8, 11.
Several approaches can be adopted to ease the financial burden associated with the government’s creation of a state assurance fund. One such approach is to use registration fees to help build up an assurance fund. This approach will require some amount of initial government investment, as an assurance fund solely dependent on registration fees is initially inadequate since the fund will be vulnerable to claims before it has had time to build up. Another approach is to delay the introduction of an assurance fund until a later stage of registration when registration fees have accumulated to a level that can maintain such a fund without additional government investment. This approach has been adopted by Moldova, where the 1998 Law on Real Estate Cadastre calls for the creation of an assurance fund, but actual creation of such a fund is unlikely in the near future.

Regardless of the timing and approach for the establishment of a state assurance fund, the law governing registration should identify the agency or agencies responsible for the introduction of assurance funds and the time limit for the responsible agency to submit procedures for establishing such funds. The law should also contain provisions limiting compensation in the event of a mistake. Where a mistake has been committed but the register does not require correction, compensation to the injured party should not exceed the value of the interest at the time the mistake or omission was made (rather than the value of the property at the time the mistake or omission is noticed). Where the register does require correction, compensation to the injured party should not exceed the value of the interest immediately before the time of correction, rather than at a future time. The law should also provide a procedure for claiming compensation and should expressly provide that the government may recover its loss from each person who actually caused it.

Recommendations

- Registration laws should specify the situations when the state will be liable for material mistakes made by the registration agency.

- Registration laws should provide for the creation of a state assurance fund to compensate parties who suffer damages due to mistakes by the registrar.

- The law should further contain procedures for claiming compensation from the fund and the type of compensation for which the claimant is eligible.

E. Lack of public access

Impediment

Tajik law does not explicitly either deny or accommodate public access to the land registry, thus leaving the degree of access largely up to the discretion of state and local Land Committee officials.

88 SIMPSON, supra note 15, at 28, 181.
89 E-mail communication with Robert Mitchell, Legal Team Director, USAID Moldova Land Registration and Titling Project, July 6, 1998.
Limited public access to the land registry threatens the long-term integrity of the system. Moreover, the registry’s usefulness as a source of land market information remains unmet if public access is limited. In addition to any direct limitation on access, any charges for access should be kept to a nominal fee for clerical assistance or other costs incurred by the registration office in providing help. Timeliness of access is also important. Under ideal circumstances, immediate access to the register should be granted to any individual who can establish a right of access. If immediate access is not possible due to administrative or personnel constraints, the delay between a request for information and the provision of access or information should be minimized.

**Recommendations**

- Require in the registration law that registry information be open to public inspection and otherwise available to the public without significant delay.
- Keep the workings of the land register simple enough so that members of the general public can easily ascertain all relevant information from the register upon inspection.
- Provide access free of charge or establish fees for provision of assistance that are low and limited to covering direct costs.

**F. Requirements for a Soviet-style physical cadastre hinder establishment of an efficient legal registration system**

**Impediment**

Articles 64-65 of the Land Code establish the requirement for the Land Committee to maintain a Soviet-style cadastre, meaning a recordation of the detailed physical aspects of all farm land. These requirements for physical cadastre are not necessary for legally valid registration, and in fact can greatly hinder the registration process by slowing it down and requiring extensive Land Committee resources. Senior government officials reported to authors that a single farm requires an average of one and a half to two years to “cadastre” under the current system, a feat that cannot be accomplished in sufficient quantities by the current reduced staff.

**Recommendations**

---

90 The land cadastre process includes:
- state registration of used land;
- quantitative and qualitative land statistics;
- soil assessment; and
- economic land evaluation.

The cadastre process entails the following types of research: “aerocosmic, topographic, land surveying, cartographic, soil-examining, geobotanical, meliorative, and other forms...” Land Code at Art. 18.

91 Officials reported budget constraints and an extreme shortage of qualified personnel, resulting largely from the withdrawal of the Soviet Union in 1991, as the reasons for understaffing.
• Alleviate the requirements in the Land Code and other laws for the maintenance of a Soviet-style physical cadastre. Rely on market values to set normative prices and land tax rates.

• In the alternative, during the interim period while a land market is developing, retain only those aspects of the physical cadastre essential to estimating the market value of the land in order to establish normative prices and land tax rates.

• Replace the physical cadastre requirements with requirements for a legally-binding land registration, as set forth in Section VIII on Registration, supra. Limit the information contained in the registry to that which is absolutely essential, such as parcel descriptions, ownership, and other interests in the immovable property.

IX. Tax

Impediment

Both dekhan farmers and members of unrestructured farms consistently reported high taxes as a disincentive to farm privately. Farmers and officials repeatedly reported the overall tax burden to be 55% of gross income. This included payroll taxes such as pension fund and social security, road tax, land tax, value added tax, profit tax, and payment for electricity and water. One senior government official discussed a draft law establishing a “unified tax” for dekhan farmers which would be assessed and collected at one time for a set rate of 30%.

Recommendation

• Consider a unified tax for dekhan farmers of 30% or some other set amount in order to reduce the confusion and expense associated with current system. Accompany this new law with an information campaign to dekhan farmers and to current members of unrestructured farms.

X. Compulsory Acquisition: Insufficient safeguards for the taking of private land rights for public and private purposes

Impediment

Article 72 of the Land Code states that when a “competent executive body” decides to sell the property of a dekhan farm or transfer a land plot to another citizen, enterprise or organization, the landholder is entitled to full compensation for crop costs and the costs of land improvements. Articles 44-48 of the Land Code set forth rules for indemnification of agricultural losses, but it is unclear when these rules apply, and whether these provisions contemplate compensation in the event of a state takings at all.

92 Observations on tax are preliminary: authors did not have the opportunity to review the tax laws.
These provisions foment tenure insecurity in several ways: (1) they allow the state to withdraw the rights from one private holder in order simply to reallocate these rights to another private holder; (2) they fail to clearly define what agencies have the authority to exercise the state’s power of eminent domain, and in what circumstances they may exercise this authority; and (3) they do not define specific procedures for valuating and compensating the private rights-holder for the loss of land rights (not just for the loss of agricultural production).

Recommendations

- Eliminate all legal provisions granting the state the right to withdraw private land rights in order to re-allocate them to another private party. Replace these with a clear “public purpose doctrine,” stating that private rights may only be withdrawn for overriding public need.
- Adopt legislation that defines what agencies are authorized to exercise the power of eminent domain, and in what specific circumstances.

XI. Land Dispute Resolution

A. Lack of access to courts contributes to dependence on rayon executives (khukumats) for dispute resolution

Impediment

Tajikistan laws steer land disputes to the economic courts for resolution. Farmers and officials reported, however, that most disputes are settled by the khukumat, in part because the courts are nearly impossible to access due to large case loads, inconvenient locations and expense. Although this informal method of dispute settlement through the khukumat may function adequately in many cases, it could be problematic in the event, for example, that the khukumat is resistant to land reform. Also, as the reform process gets underway and more farm members begin to withdraw land shares, disputes over land shares and boundary rights will rise, creating an increased need for efficient dispute resolution channels.

Recommendations

- Consider establishing local level “land courts” specializing only in land disputes.

93 Authors found that the heads of rayon khukumats retained the power to withdraw the vladenye (lifetime inheritable proprietorship) rights of dekhan farmers.
94 See, e.g., Land Code, art. 50 (land disputes settled in economic courts); Law on Leasing, art. 14 (disputes arising during the lease term is resolved by state arbitration or a court, depending on the subject matter jurisdiction).
• Consider establishing a “middle-level” administrative dispute resolution mechanism that would offer a chance for a streamlined settlement. All decisions would be appealable to the economic court.

XII. Legal Authority and Drafting

A. Lack of rules on legal authority and hierarchy

Impediment

The Tajik constitution does not establish the relative legal authority accorded to the various types of legal documents pertaining to land reform, nor was the author able to locate any other law containing guidance on this issue. This lack of direction results in confusion about the legal authority of any given document such as a law, presidential decree, governmental resolution, or administrative recommendation, both standing on its own and as it relates to other documents in the event of a conflict. The outcome of a conflict in the language between a presidential decree and a law, for example, is unclear.

Recommendations

• Adopt clear rules on the relative authority on the legal documents pertaining to land reform, including laws, presidential decrees, governmental resolutions, and ministry recommendations. Determine the authority of each type of document standing on its own and define the outcome in event of conflict between types of documents.

B. Conflicting, overlapping laws

Impediment

The body of legal documents defining land reform in Tajikistan contains conflicting provisions about essential elements of land tenure. One example of this, as described above in Section IV on Land Shares, supra, is the requirement that land share rights be certified. This requirement was first set forth in the Law on Dekhan Farms in 1992, omitted from all reform laws until 1997, when mentioned in the Ministry of Agriculture’s Recommendations on Enterprise Reorganization, then significantly omitted again in 1998, when Presidential Decree No. 1021 adopted Certificates on Land Use as proof of individual’s rights to land. The lack of consistency in land reform legislation regarding certification of land shares is enough to prevent efficient implementation by even the most reform-minded officials.

Conflicting and overlapping laws and guidelines have contributed to a patchwork pattern of reform that varies from rayon to rayon, depending on discretion of local officials and kolkhoz or sovkhoz management. Three examples of the variations in reform implementation between rayons are as follow:
The khukumats in some rayons permit allocation of land for dekan farms from the khukumat’s land reserve fund, but not from the sovkhozes or kolkhozes. In other rayons the khukumats approve the formation of dekan farms directly from the farm worker’s land share from a kolkhoz or sovkhoz.

In some rayons, all residents have been allocated “land shares” which entitle them to apply for title to a dekan farm. In other rayons only the members of sovkhozes and kolkhozes have been allocated such shares.

Some khukumats claim to have already achieved rayon-wide restructure of all sovkhozes and kolkhozes. In other cases, reform of each large farm takes up to 2.5 years, according to the khukumat.

**Recommendation**

- Undergo a comprehensive review of all land reform and land law documents in order to harmonize conflicting provisions. Amend and republish laws and other documents when necessary to achieve consistency.

---

95 In one case, the head of the khukumat told us that all farms in the rayon had been restructured. We later talked with several residents of the rayon who belonged to kolkhoz’s and sovkhoz’s, however.
CONCLUSION

The greatest legal threats to secure private tenure and a functioning agricultural land market in Tajikistan are: (1) the lack of ownership-like rights to land, including the right to transact land and protection from excessive state intervention in private land rights; (2) insufficient legislation and regulations to facilitate the widespread privatization of large collective enterprises, including the failure to legislate the transfer of primary land use rights from the enterprise management to the individual members; (3) regulatory and cost barriers that thwart the formation of dekhan farms; (4) lack of an adequate land registration system; and (5) conflicts and ambiguities in the body of legislation that addresses agricultural land reform.

Tajikistan is beginning to benefit from agricultural land reform, as is evident from the growing number of dekhan farms realizing significantly higher yields than their sovkhoz and kolkhoz counterparts. The overwhelming desire for dekhan farms expressed by current members of large collective enterprises provides momentum for further privatization and break-up. Further gains from land reform will depend, however, on the development of legislation that achieves security of private land tenure and the necessary foundation for an agricultural land market.
Annex 1: Legislation of Tajikistan Affecting Land Reform, as of October 1998

1. Constitution of the Republic of Tajikistan
6. October 1993: Decree No. 699: Regulations on Organization of Dekhan Farming in the Republic of Tajikistan”
7. October 9, 1995: Decree No. 342 of the President of the Republic of Tajikistan “On Assignment of 50,000 hectare of Lands for Personal Husbandry of the Citizens” and accompanying regulations on enactment of the decree
8. October 11, 1995: Decree No. 621 “On the Structural Reorganization of Kolkhozes and Sovkhozes and Other Agricultural Enterprises”
10. September 13, 1996, Government Resolution No. 422
11. 1997 (Date unknown): Recommendations on Reorganization of Collective and State Farms of the Tajikistan Republic, by the Committee on Land Organization and Land Resources under the Government of Tajikistan Ministry of Agriculture.”
13. December 1, 1997: Decree No. 874 of President of the RT “On Assigning 25,000 hectare of Land for Private Use of Citizens” (Consultant unable to locate)
14. June 22, 1998, Decree No. 1021 of the President of the RT “About Ensuring the Right to Land Use”

For full texts in English, please contact the Rural Development Institute.

This document and the following document were translated into English from Russian by consultant's translation services in Moscow. The English versions are difficult to understand. The translators reported to consultant that the Russian documents were also difficult to understand. This may suggest difficulty with translating from Tajik to Russian in Dushanbe; in which case re-translation should be considered.
Annex 2: Summary of Relevant Provisions of Reform Laws in Chronological Order


- Land is the exclusive property of the state. Art. 2.
- Primary landusers have tenure of unlimited duration or life-long inheritable tenure. Secondary landusers are lessees of land plots. Art. 13.
- Articles 14-17 establish four types of land tenure.
  1. Land tenure of unlimited duration, which is available to state-run and cooperative agricultural enterprises, international associations and organizations, and other enterprises and associations. Art. 14.
  2. Life-long Inheritable Tenure, which is available to physical persons or groups of citizens to establish dekhan farms or to take up other “traditional trades.” Art. 15.
  3. Terminal Land Use, which is available to secondary users for public use only. Art. 16.
  4. Land lease, which is available to secondary users for a term of 20 years (if from a private primary holder) or 10 years (if from the land reserve funds) for a price not to exceed the land tax rates. Art. 17

- Dekhan Farms (Articles 69-73)
  1. The Khukumat and Land Inspection Department assign the size of dekhan farms. dekhan farms have the right to lease in additional land. (Art. 69)
  2. Khukumat has final approval authority on allotting a dekhan farm, but applicant has right to appeal Khukumat’s decision in court. (Art. 70)
  3. Lands of state and cooperative farms (except special-purpose state farms) shall be divided into conditional shares between their regular members. To withdraw from a state or collective farm, a citizen must apply to the director of the state or collective farm. The directors must reach a decision on the application within one month. If approved, the application goes next to the Khukumat, who must also reach a decision within one month. If denied by the collective directors, the Khukumat may, upon recommendation of the land commission, consider the question of the land allotment separately. A citizen may appeal the rejection of his application to court. (Art. 71)
(8) If an executive body sells or transfers the land of one dekhan farm to another citizen, enterprise or organization, landholder entitled to receive full compensation. (Art. 72)

(9) If the head of a dekhan farm “loses his ability to work or thinks of retiring on pension,” he may transfer his right to lifelong inheritable tenure of the farm either to: (1) other family members working on the dekhan farm; or, if no such person exists, to (2) anyone with necessary qualifications. (Art. 73)

• Every rural citizen can be assigned plot for subsidiary household farming. The maximum size of the plots is: .15 hectare (irrigated); .25 hectare (non-irrigated); or .40 hectare (mountains). (Art. 74)

• The national land reserve fund will be created by: (1) lands “not allotted for permanent use;” (2) lands where use rights are confiscated due to non-use, “irrational” use, or any of the other grounds listed in Art. 40; and (3) lands of the “special land reserve.” The rayon khukumats have jurisdiction over the funds, which shall be used primarily to lease out for agriculture. (Art. 102)

• Purchase and sale of plots, and transfer by gift are illegal. (Art. 104)

December 6, 1990: Law No. 184 of the Republic of Tajikistan “On Leasing in the Republic of Tajikistan” (Amended December 6, 1996)

The lease law contains 2 divisions: Division I on “Common Regulations on Leasing;” and Division II on “Lease Sub-contracts within a Legal Entity.” Division I sets forth the process for reorganizing a kolkhoz or sovkhoz as a Lease Enterprise, and governs the relations between the Lease Enterprise (primary tenant) and the state (landlord). Division II sets forth the rules for arenda leases between the Lease Enterprise (primary tenant) and individual workers or groups of workers (secondary tenants).

Division I

• Any person, including foreign legal and physical persons, has the right to lease out property. (Art. 4.1)

• State farms and other agricultural enterprises may lease out their land. (Art. 4.3)

• State may excise a percentage of rental income, not higher than bank interest rates, for “public needs.”

• Minimum period for a lease is one crop rotation, maximum period is 5 years. (Art. 12.1)
• Creation of lease enterprise: (1) Two-thirds of the members of the general meeting must vote to establish a lease enterprise. (2) The members, now called a “tenant organization,” draft a lease agreement and submit it to the “State Office” which decides whether to approve the lease of state property to individuals. (This is really just semantics, as property does not “transfer” at all.) (Art. 16.1)

• General meeting adopts a charter. (Art. 16.2)

• Lease enterprise adopts the property assets and liabilities of the state enterprise. A lease agreement establishes terms between landlord and tenant regarding: fuel, raw materials, incomplete production, final products, etc. (Art. 16.3)

**Division II**

• The lease sub-contract governs most relations between the lease enterprise (primary tenant) and lease share units, or “lease collectives” (secondary tenants). The lease collective must pay a “rent” calculated by the estimated average profit from the crops produced. (Art. 31.1) The lease collective is entitled to “dispose of” outputs surpassing this “rental” payment/quotas. (Art. 30.1)

• Lease collectives independently provide for payments of salary, work schedules, and accounting. (Art. 29.3)

• The lease enterprise conducts banking negotiations, plans major outputs, and enforces a “common technical policy.” (Art. 30.2)

**March 5, 1992: Law No. 544 of the Republic of Tajikistan “On Dekhan Farms”**

• Every citizen has the right to create a dekhan farm. (Art. 5)

• Khukumats decide on applications for dekhan farms. The Khukumat determines the size of the dekhan farm by taking into account the numbers of members, specializations, and “limit standards” in district and in farm. Land for dekhan farms is awarded mainly from the Khukumat’s special land fund. (Art. 6)

• Dekhan farms have the right to lease in an additional land plot. (Art. 6)

• Expenses for keeping the cadastre, land development, etc. are covered “at the expense of the budget means.” Expenses for allotting the land and drawing up the Gos Act are covered by the dekhan farm. (Art. 6)

• Special land fund is established for creation of dekhan farms. This will be created from the lands of kolkhozes and sovkhozes, as well as from lands confiscated for non-use. (Art. 7)
• Lands of kolkhozes and sovkhozes are to be “conditionally distributed” between the permanent members of the collective body in the form of shares. These shares entitle each of the workers of the farm to the right to a land plot. The size of the land share is determined by a decision of the collective and certified by proper documentation. The land share can be inherited, and it can be taken into account to determine profit distribution. (Art. 10)

• Any member of a kolkhoz (or solkhoz), including pensioners, has the right to get a share of the property, less value of debts owed, of the enterprise. The amount of the share will be determined by the labor participation of each worker. Dividends are to be paid annually on the basis of the shares. (Art. 10)

• A citizen conducting a dekhan farm has the right to lease out a land plot “in case of temporary invalidity, call for military service, entrance into educational institution.” (Art. 12(1)(b))

• Receive full compensation in case the state confiscates the plot. (Art. 12)

• Production on the dekhan farm is mostly by personal labor of the family members of that dekhan farm. The dekhan farm may hire labor as well. (Art. 18)

• Dekhan farm associations may be established by independent dekhan farms or upon whole-farm break-up of a kolkhoz or solkhoz. (Art. 22) Dekhan associations are governed by a council chosen by the general meeting. (Art. 23) Dekhan farms in a dekhan farm association keep their status as independent juridical persons and keep the rights to their land plots. (Art. 22) Dekhan farm associations, however have the right to, among other activities, “centralize individual productive and economic functions.” (Art. 24(1)).

• March 14, 1992: Law No. 604 of the Republic of Tajikistan “On the Land Reform”

• Household plots are assigned lifelong inheritable tenure. (Art. 3)

• Establish (again) the district (Khukumat) land reserve fund. (Art. 8)

• Generally: land of kolkhozes and sovkhozes will be “privatized” into dekhan farms, lease share enterprises, and agricultural co-ops. (Art. 14)

• State farms used for special seed growing, nursery stocks, cattle-breeding and scientific research are exempt from privatization and reorganization. (Art. 15)
October 1993: Decree No. 699: Regulations on Organization of Dekhan Farming in the Republic of Tajikistan”

This decree sets forth the step-by-step process governing the application for and allotment of a dekhan farm. It was published in the Farmer of Tajikistan: Monthly Bulletin of Information and Consulting Center for Farmers.

- Private citizens have the right to leave the staff of kolkhozes and solkhozes and other agricultural enterprises and create dekhan farms on the land they worked. (Art. 1)

- The procedure for applying for a dekhan farm is as follows:

  (10) A citizen applies to the Khukumat for allotment of land for a dekhan farm. In application, must indicate the members of the future farm and the purposes for which it will be used. (Art. 2.1)

  Both farm members and other residents of the rayon may apply. (Art. 2.3)

  (11) Khukumat registers the application and sends it to the regional Land Reform and Tenure Department. (Art. 2.2)

  (12) The Land Reform Department considers the application for land allotment, draws up the land tenure documents and sends them back to the Khukumat with a recommendation. (Art. 2.4)

  (13) Citizens qualified in agriculture who live in the “given locality” have a priority right to the land. (Art. 2.4?)

  (14) The Khukumat considers the application, along with recommendation from the Land Reform Department, and determines whether to allot the land. (Art. 1.1)

  (15) If the Khukumat approves the application, the regional Land Reform Department maps the borders of the lot, indicating the bounds signs. Two copies of “the act” demarcating the land are drawn up and signed by head of the dekhan farm and by an executive from the regional Land Reform Department. The head of the dekhan farm keeps one copy and one is filed with the Land Reform Department. (Art. 1.2)

  (16) The regional Land Reform Department makes two copies of the State Act, which is then signed by the Khukumat and the chief of the Land Reform Department. One copy goes to the head of the dekhan farm and one stays with the Land Reform Department. (Art. 1.3)

  (17) The regional Land Reform Department registers the lands allotted to the dekhan farm in the land cadastre book.
October 9, 1995: Decree No. 342 of the President of the Republic of Tajikistan
“On Assignment of 50,000 hectare of Lands for Personal Husbandry of the
Citizens” and accompanying regulations on enactment of the decree

- The additional 50,000 hectares for household plots will be distributed first to
  families who have less land per capita in their household plots than others.  
  (Art. 6)
- The plots will not be distributed to persons who are members of private
  farms, or who work at cooperatives or small enterprises. (Art. 7)
- The plots shall not be granted, transferred or sold to any other person. (Art.  
  9)

October 11, 1995: Decree No. 621 “On the Structural Reorganization of Kolkhozes
and Sovkhozes and Other Agricultural Enterprises”

- The government resolves to “admit reasonable” the transfer of unprofitable
  kolkhozes, sovkhozes, and other agricultural enterprises into lease share
  enterprises, cooperatives, dekhan farms and other forms of farming
  corresponding with a market economy. (Art. 1)
- Profitable sovkhozes will be transferred into kolkhozes. (Art. 2)
- Specialized farms engaged in elite-seed-growing and cattle-breeding shall be
  transferred into state farms called goskhozes. (Art. 4)

June 25, 1996: Decree No. 522 of the President of the Republic of Tajikistan “On
the Reorganization of the Agricultural Enterprises and Organizations” and
accompanying regulations

- Members of collective agricultural bodies “can” decide to reorganize into
  dekhan farms, collective enterprises, or joint ventures, cooperatives, joint-
  stock companies, or associations. If the body chooses to remain a collective
  enterprise, it must re-register as such. (Art. 3)
- A worker has the “unconditional right” to withdraw his share without the
  agreement of the collective body or administration. (Art. 3)
- The State Commission for Reorganization of Agricultural Enterprises
  ultimately determines the method of re-organization, taking into
  consideration the proposals of the collective bodies. (Art. 5)
- Social-cultural property of the former collective will go to the Jamoat. (Art.  
  6)
- (Possible provision on debt write-off policy) (Art. 9)
• Present workers, pensioners and invalids have the right to a property share in the collective's assets. The collective body may choose to extend property shares to social sphere workers, past workers and persons laid off after 1993. Large, indivisible property will be “redeemed” and leased out to workers. (Art. 13) A member who voluntarily withdraws from a reorganized enterprise is allotted his property share. (Art. 17) A property share holder has the right to devise it to. (Art. 18)

• The Land Commission is in charge of allocating enterprise land to: (1) land for the reorganized enterprise; and (2) land for the district land reserve fund. (Art. 19)

• Lands allotted for reorganized kolkhozes, solkhozes and other agricultural enterprises are distributed in land shares among permanent workers. The district Land Commission determines the size of the shares. The shares are to be certified by “proper documentation.” When leaving a kolkhoz to start a dekhan farm, a worker can receive a land plot from the kolkhozes land in the amount of his share. (Art. 22)

• The district Land Committee will consider land disputes. The land share holder may appeal the decision of the Land Committee to the courts. (Art. 22)

• A worker applies to the district Land Committee to receive a demarcated land plot. The plot should be in the area where the worker worked. The Land Committee must make the decision within one month.

September 13, 1996, Government Resolution No. 422:

This document sets forth in greater detail the structure of the rayon and blast Land Committees and the authority of the Land Committee in land management and land reform. It does not add significantly to the duties set forth in the Land Code. For details refer to the document.

1997 (Date unknown): Recommendations on Reorganization of Collective and State Farms of the Tajikistan Republic, by the Committee on Land Organization and Land Resources under the Government of Tajikistan Ministry of Agriculture.*

These recommendations were issued by the Ministry of Agriculture to provide guidance for implementation of Decree No. 522 and the accompanying regulations on Reorganization of sovkhozes and kolkhozes. While these recommendation contain important provisions regarding land rights during restructure, their legal authority is unclear. First, the recommendations were issued by the Ministry of Agriculture. They

*This document and the following document were translated into English from Russian by consultant's translation services in Moscow. The English versions are extremely difficult to understand. The translators reported to consultant that these were two of the most poorly written documents in Russian the translators had ever read. This may suggest difficulty with translating from Tajik to Russian in Dushanbe; in which case re-translation should be considered.
have not been officially approved of by either the president, parliament (majlisi osi), or government. Second, these recommendations do not purport to be binding; they are suggestions only. Farm management, therefore, can take or leave these recommendations at will. This said, the recommendations contain the following provisions which clarify (and in some cases introduce for the first time) land use rights and the restructure process:

**Land share rights (Section 1)**

- Definition of land share. The rayon Committee on Land Resources and Organization determines the rayon norm for the size of a land share per person. The rayon Land Committee then determines the part of each enterprise that will go to land shares and the part that will go to the land redistribution fund. From the first part, the Land Committee determines the share size per person on the farm. Exactly how this is done, and whether it requires equal sizes for all farm members, is unclear in the Recommendations. However the size is determined, it may not exceed the rayon norm.

- Disputes regarding distribution of land shares go first to the Land Committee for resolution, but the plaintiff reserves the right to appeal this decision to the courts.

- Each land share holder is entitled to receive a certificate of ownership.

- A land share entitles its holder to receive a land plot of at least the size of the share upon withdrawal from the farm. Individual share holders preserve the right to withdraw even if the collective membership decides to continue farming collectively.

- Share holders have the right to dispose of their rights in several ways: (1) receive a land plot and property share upon withdrawal from the enterprise to farm individually; (2) contribute shares to the charter capital of a joint stock company; (3) contribute shares as entrance participatory share of a production cooperative; or (4) transfer shares into inheritance “within the framework of effective legislation.”

- Shares are transferable and may be bought and sold for the purpose of consolidating plots of several members who are withdrawing as a group to start a dekhan farm.

**Property share rights (Section 5)**

- Individuals in each enterprise undergoing reorganization have the right to property shares.  

99 Note this language does not exclude sovkhozes.
The process for allotting the property shares is as follows: (1) valuate all property in the enterprise; (2) determine the list of those eligible for shares; and (3) determine the size of each share based on each person's relative contribution to the total property fund of the enterprise. Factors to be considered include length and actual time of employment and a coefficient representing the professional level of employment.

**Farm restructure (Section 2)**

- kolkhozes and sovkhozes must complete reorganization prior to December 1, 1996.
- kolkhozes and sovkhozes may reorganize in one of three ways: (1) into dekhan farms; (2) into a joint stock company; or (3) into a production cooperative, otherwise referred to as a "collective enterprise." (Note this provision does not list lease share enterprise as a valid form of reorganized farm.)
- Members of solvent enterprises may choose the course of reorganization; the state chooses the course of reorganization for insolvent enterprises.
- A "reorganization commission" is set up on each kolkhoz or sovkhoz to organize and control the initial division into shares and subsequent individual or group withdrawals. This commission is led by current farm management.
- The list of state farms exempt from privatization is kept by the (state?) government.
- In the event of whole-farm break-up into dekhan farms, the land is demarcated into plots and each plot is valuated. Distribution of the plots is by auction, but the procedures for distribution of voucher rights and bidding are unclear.

**Joint Stock Companies (Section 5)**

- All members of a sovkhoz or kolkhoz who vote to reorganize into a joint stock company become "founders" by automatically contributing their shares to the charter capital.
- Each founder is entitled to a certificate for his shares in the charter capital.
- In open joint stock companies, share holders can transfer their shares to any person; in closed joint stock companies share holders can only transfer their shares subject to the right of refusal held by the rest of the members.
- If a share holder's charter capital contribution was a land share, this individual has the right to receive the plot in kind upon withdrawal, unless otherwise stated in the charter.
Production Cooperatives (“Collective Enterprises”) (Section 6)

- Share capital is held in “collective common ownership” (although this is not defined).
- An individual who withdraws from a production cooperative is entitled to his share in kind or in cash, depending on the terms in the charter.


This document sets forth specific guidelines for allocating property shares in the restructure process, mirroring closely the provisions in the Recommendations on Reorganization of Collective and State Farms of the Tajikistan Republic, discussed above. The recommendations are not binding on either officials or farm management. They are also convoluted, difficult to understand, and repetitive of the Recommendations on Reorganization discussed above. For details, see the regulations themselves.

December 1, 1997: Decree No. 874 of President of the RT “On Assigning 25,000 hectare of Land for Private Use of Citizens” (Consultant unable to locate)

June 22, 1998, Decree No. 1021 of the President of the RT “About Ensuring the Right to Land Use”

- Confirms the “Certificate on Land Use” and “Land Passport” as the documents used to confirm the right to use land, but does not describe these documents.
- States that Land Certificates will be issued for the following purposes: (1) household plots; (2) collective gardening plots; and (3) dekhan farms. (Significantly does not include “land shares” in this list.)

July 27, 1998, Resolution No. 244 of the Government of the RT “About Measures for the Implementation of the Decree of the President of the RT ‘About Realization of the Right to Land Use,’ ” and attachments (sample Land Use Certificate, Schedule for numbers of restructured farms over the next year, per region)

- Assigns issuance of the Certificates on Land Use to the Land Committee.
- Calls for: (1) promulgation of future regulations on the procedures for issuing Land Use Certificates and fixing a price for the certificates; and (2) the adoption of standard forms for registration of the certificates.
Annex 3: Items to be Included in a Land Registration Law and Implementing Regulations

1. Explicit recognition that the register reflects the ultimate legal status of the registered property, with appropriate limited exceptions such as possessory interests;

2. A specific list of rights and encumbrances that must be registered;

3. A list of “overriding interests,” or rights and restrictions that are valid whether or not they have been registered;

4. Provisions creating a uniform registration system at the rayon level;

5. Mandatory title registration for immovables;

6. Registration of land shares;

7. Ownership subject to registered interests listed on registration certificate;

8. Leases of three years or less need not be registered;

9. Designation of a single registration agency for all immovables and statement that registration at other agency does not affect title registration; Definition of the responsibilities of registration officials and rules governing the delegation of powers;

10. Specific procedures for maintaining records, including:

   (i) Organization of all records into files, with one master file per land plot containing a subfile for each occupying structural immovable;

   (ii) A unique certificate number for each certificate given to each owner of each immovable;

   (iii) A unique cadastre number for each separately owned immovable, which in the case of a structural immovable shall relate to the land plot occupied, and, in the case of an apartment, shall relate to the building occupied;

   (iv) Contents of instruments for transfer, exchange, lease, mortgage, and easement;

   (v) Registration of apartments;

   (vi) Correction of records and limitation statute;

   (vii) Electronic records vs. written records;

   (viii) Receipt book and pending applications;

---

(ix) Termination of registered rights;
(x) Proof of identity;
(xi) Agent for notice by non-resident;
(xii) Time limits for action by registration official;
(xiii) Replacement of lost certificates;
(xiv) Microphotographing certificates and instruments;
(xv) Violation of ceiling limits;
(xvi) Registration after forced sale;
(xvii) Fees;
(xviii) Penalties.

11. List of exclusive reasons for refusing registration of immovables ownership;
12. Court jurisdiction over claims and disputes;
13. Standard State Certificate of Land Ownership and other standardized registration forms;
14. Provision requiring that original of State Certificate of Land Ownership to be filed at the registration office; owner to receive owner’s copy;
15. Mandatory, automatic registration of future grants of public immovables to private persons;
16. No perimeter drawing or land plan required to register initial grant of land plot or initial grant of structural immovable;
17. Status of rights embodied in old certificates conveying rights to land plots remain valid and may be registered;
18. Legal rights of non-registered possessors;
19. Other government agencies shall deliver files requested by registration agency;
20. Ownership must be registered in order to transfer, mortgage, lease, or create some other interest in an immovable;
21. No other interest in an immovable can be registered until ownership of the immovable has been registered;
22. Registration may include both indefinite (permanent) use rights, or temporary use or lease rights granted by the state or municipality;
23. Registration agency liable for damages arising from errors, including negligence;
24. Provisions specifying when state is liable for registration errors;
25. Provisions creating an assurance fund and detailing its operation.
SELECTED REPORTS IN THE
RURAL DEVELOPMENT INSTITUTE SERIES

Roy L. Prosterman, Brian Schwarzwalder, and Ye Jianping (March 2000)

#104 Mortgage in the Bulgarian Agricultural Sector
Renee Giovarelli (March 2000)

#103 The Joint Stock Share System in China’s Nanhai County
David J. Bledsoe and Roy L. Prosterman (February 2000)

#102 Legal Aid Centers in Rural Russia: Helping People Improve Their Lives
Leonard Rolfes, Jr. and Gregory Mohrman (February 2000)

#101 Policy, the Rule of Law, and Rural Land Reform in China
David J. Bledsoe and Roy L. Prosterman (February 2000)

#100 A Vision for Agricultural Land Reform in Russia
Roy L. Prosterman, Leonard Rolfes, Jr., and Jennifer Duncan (November 1999)

#99 Agricultural Land Markets in Lithuania, Poland, and Romania: Implications for Accession to the European Union
Roy L. Prosterman and Leonard Rolfes, Jr. (October 1999)

#98 Rural Land Reform in China and the 1998 Land Management Law by Roy Prosterman, Tim Hanstad, Brian Schwarzwalder and Li Ping (December 1998)

#97 Are Smaller Farms Appropriate for Former Soviet Republics?
Tim Hanstad (February 1998)

#96 Land Reform and Farm Reorganization in the Kyrgyz Republic
Renee Giovarelli (January 1998)

#95 Agrarian Reform in the Russian Far East
Bradley Rorem and Renee Giovarelli (October 1997)

Copies of RDI reports may be ordered from:
Rural Development Institute
4746 11th Avenue N.E., #504
Seattle, WA 98105

Phone: (206) 528-5880 • Fax: (206) 528-5881
Email: info@rdiland.org