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Substantive and Procedural Protection
of the Rights of Economic Entities
and Their Owners

AUTHOR: Peter Maggs

CONTRACTOR: Lehigh University

PRINCIPAL INVESTIGATOR: Donald D. Barry

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NCSEER NOTE

This paper is #14 in the series listed on the following page. The series is the product of a major conference entitled, In Search of the Law-Governed State: Political and Societal Reform Under Gorbachev, which was summarized in a Council Report by that title authored by Donald D. Barry, and distributed by the Council in October, 1991. The remaining papers will be distributed seriatim. This paper was written prior to the attempted coup of August 19, 1991.
1. GIANMARIA AJANI, "The Rise and Fall of the Law-Governed State in the Experience of Russian Legal Scholarship."

2. EUGENE HUSKEY, "From Legal Nihilism to Pravovoe Gosudarstvo: Soviet Legal Development, 1917-1990."

3. LOUISE SHELLEY, "Legal Consciousness and the Pravovoe Gosudarstvo."

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8. HIROSHI ODA, "The Law-Based State and the CPSU."


10. ROBERT SHARLET, "The Fate of Individual Rights in the Age of Perestroika."

11. NICOLAI PETRO, "Informal Politics and the Rule of Law."


15. WILLIAM B. SIMONS, "Soviet Civil Law and the Emergence of a Pravovoe Gosudarstvo: Do Foreigners Figure in the Grant Scheme?"

16. KATHRYN HENDLEY, "The Ideals of the Pravovoe Gosudarstvo and the Soviet Workplace: A Case Study of Layoffs."

17. Commentary: The printed versions of conference remarks by participants BERMAN, SCHMIDT, MISHIN, ENTIN, E. KURIS, P. KURIS, SAVITSKY, FEOPANOV, and MCOZOLIN
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Executive Summary

The Soviet Union cannot achieve a viable market economy unless it provides for effective legal protection of the economic entities and individuals that are participants and investors in that economy. Although the Soviet Union has made substantial progress in the short period from 1989 to the spring of 1991, it still has far to go to establish the full set of legal protections needed for a market economy. If it is in the interests of the United States for the Soviet Union to move toward a market economy, the United States should consider providing the USSR with technical assistance in creating the additional necessary legal institutions.

For many years, Soviet reformers attempted to provide legal protection for managers of state enterprises against their superiors in the economic ministries. These attempts failed so regularly and completely as to demonstrate that only a dismantling of the superior agencies can provide a chance for enterprises to have meaningful legal rights. Under the ministerial system, enterprises did have good protection against interference with their rights by government agencies not in the ministerial chain of command, since the ministries would "protect" their enterprises. The prospective abolition of the ministerial system would require major steps to create and invigorate legal institutions to ensure fair treatment of enterprises by government agencies. There have been important first steps toward providing judicial review of government agency actions, but much more needs to be done.
Economic entities in a market need protection against unfair trade practices by other economic entities. In the past to the limited extent that there was a market, the ministries also provided this protection for "their own" enterprises. Important legislation is in the drafting stage to provide legal protection against monopolistic practices, intellectual property violation, and other unfair trade practices. However, a great deal will need to be done to move this legislation from paper to practice.

Owners and prospective owners of economic entities need protection. In market economies, corporation and securities regulation law protects stockholders against abuses by management, protects minority stockholders against majority stockholders, and protects stock buyers against fraud. None of these protections exists yet in Soviet law, yet without them there cannot be a healthy climate for investment.

The Soviet Union has come far, but it still has far to go. It has great need of assistance in the form of educational training, legislative drafting, and institution building if it is to create the legal protections needed for a market economy.
Introduction

The existence of protected rights for economic entities and their owners is contrary to the idea of a "socialist state," but is quite compatible with a "law-based state." The existence of a socialist state implies ownership of the means of production by the state. The result is that there is only one economic entity with economic rights. It does not need legal protection against state infringement upon its rights--"l'État--C'est moi!".¹ The functioning of a market for means of production, in contrast, requires a law-based state, to protect the rights of the participants in the market against the state. The period from 1985 through 1989 was one of vain search for some way to retain socialism while providing legal rights to state-owned economic entities. This search failed. State enterprises remained socialist, but attempts to give them rights were unsuccessful. Cooperatives received real rights, but remained socialist in name only. The year 1990 was a turning point, as the Soviet lawmakers passed legislation whose language provided mechanisms typical of market economies for creating economic entities with real rights against the state.

The Soviet Union in the mid-1980s was not merely a socialist state--it was a Communist-Party-state, in which both the Constitution and actual practice guaranteed the Communist Party a "leading role" in all entities. This leading role could not coexist with a move to a market economy, where enterprise behavior would be governed by perceptions of market forces rather
than by Party directives and where enterprise owners would select managers on their business ability rather than upon Party recommendations. Thus a second part of guaranteeing rights to enterprises had to be the removal of Party powers over selection of enterprise managers and directing their behavior. Developments in 1990 also went in this direction.

A key question of protection of rights remains unsolved. This is the division of the power of economic regulation among the USSR, republic, and local governments. The rapid decrease of power at the USSR level and the assertion by individual republics of the power to nullify USSR law has raised serious questions about the stability of property rights, particularly property rights to natural resources.

The stated intention of the Soviet leadership is to move not to a pure market economy, but to a regulated market economy. Such an economy requires legal mechanisms to distribute the power to regulate and to keep the regulators within the bounds of their authorities. Soviet legislation has barely begun to deal with these problems.

Protection of the Rights of Economic Entities

Introduction

The protection of the rights of economic entities moved through a number of stages in the period 1980-1990. Through about 1987, the leadership concentrated its efforts on encouraging more initiative in the socialist economy, while maintaining its structure. Economic entities remained in hierarchies under "superior agencies." Not only these agencies, but other government agencies with general jurisdiction regulated their activity. Since 1985, the Soviet Union has been moving toward increasing the ownership rights of economic entities. Under the
system as it was in 1985, property was distributed and redistributed by administrative authorities. The idea of a "regulated market economy" is to take this power over property from the administrative authorities and give it to the operative economic entities. A planned economy and a market economy imply different systems of ownership by economic entities. Planners assign tasks to economic entities and assign productive assets to those entities to enable them to carry out the tasks. In market economy, entities use their capital to pick productive assets. Darwinian selection means that those that choose well survive and those that choose poorly perish.

The planned economy has suffered from severe overcentralization. Almost every economic entity engaged in production and trade has been subordinate to a "superior agency" which micromanaged its activity. The existence of a variety of other centralized agencies with regulatory powers has compounded the problem. In addition to these governmental bodies, central and local Party officials regularly gave orders to enterprises.

**Protection Against Interference by the "Superior Agency"**

From the 1930s through the 1980s, almost every economic entity was subordinate to some government "superior agency." (Collective farms were a formal, but not an actual exception, since a variety of mechanisms allowed the authorities to micromanage collective farm operations.) Soviet economists and jurists sought ways to encourage enterprise initiative, by granting enterprises some sort of protection against mismanagement and Robin Hood tactics by superior agencies. From the 1960s through the late 1980s, lawmakers sought ways to give enterprises limited areas of independence from governmental interference, while retaining the concept of subordination of each enterprise to a superior agency. These efforts failed because
the total dependence of each enterprise on its superior agency meant that it could not "bite the hand that fed it" by claiming legal rights against it.

In the 1960s, those responsible for regulating the Soviet economy had an oversimplified view of the problem. They thought, or claimed to think, that if the planning system functioned smoothly, there was no problem for state enterprises--all the enterprises had to do was obey orders. Problems could occur only if planners made mistakes. Legislation of 1965 and 1967 offered remedies for this problem. The 1965 Statute on the Socialist State Production Enterprise provided:

46. The planned tasks established for the enterprise should be mutually coordinated, must provide for full use of productive capacities. The superior agency shall guarantee the enterprise the appropriate material, technical, and financial resources and wages fund necessary for fulfillment of the planned task.

47. A change in the planned tasks approved for the enterprise may be made only in exceptional cases with preliminary consultation on these questions with the administration of the enterprise, by the procedure and within the time limits established by the USSR Council of Ministers.

In case of alternation by the superior agency of the planned tasks for the enterprise, the necessary changes must be made simultaneously in all connected plan indicators and also in the accounts of the enterprise with the treasury.

A 1967 Decree provided that superior agencies could use reserve funds "for compensation for losses formed at enterprises as the result of changes by the established procedure of the plans of these enterprises."

As Professor Olimpiad Ioffe has pointed out, the 1965 and the 1967 provisions fell short of protecting enterprise interests both substantively and procedurally. They failed to cover many types of mismanagement by superior agencies. They failed to provide an effective procedural remedy--the victim of superior agency mismanagement could only petition the wrongdoer for
Further attempts to protect enterprises against superior agencies came during the 1970s and 1980s. A 1980 decree allowed State Arbitration to declare improper superior agency regulations to be invalid.\(^5\) Article 11 of this decree provided in part:

Upon discovery of normative acts by superior agencies of enterprises, institutions, and organizations, that are on matters of conclusion and fulfillment of economic contracts and that do not correspond to legislation, State Arbitration of the USSR shall place before the body that has approved such an act the question of its correspondence with legislation. The aforesaid body is obligated with in one month to consider the question posed and to report to State Arbitration of the USSR on the decision taken.

The 1987 Statute on the State Enterprise went considerably further in providing protection against the "superior agency."\(^6\) Article 9, para. 3, subparagraphs 2 and 3 provided:

The ministry, department, or other superior body may give an enterprise instructions only in accordance with its competence established by legislation. In case of issuance by a ministry, department, or other superior body of an act not in accordance with its competence or in violation of the requirements of legislation, the enterprise shall have the right to apply to State Arbitration to have such act declared invalid in whole or in part.

Losses caused to the enterprise as the result of the fulfillment of a superior agency's instructions violating the rights of the enterprise and also as the result of improper fulfillment by a superior body of its obligations with respect to the enterprise are subject to compensation by this body. Disputes on the question of compensation of damages shall be decided by state arbitration.

Like the similar, though weaker provisions of the 1979 Law on State Arbitration, these provisions of the 1987 law on the enterprise were almost totally unused in practice. Enterprises were too dependent upon their superior agencies to dream of taking them to court.
Creation of Economic Entities Without Superior Agencies

By the end of the 1980s it was abundantly clear that the legal mechanisms designed to curb the power of superior agencies just did not work. Many Soviet policy makers realized that the only effective protection against interference by "superior agencies" would be the removal of economic entities from subordination to superior agencies. During 1990 there have been increasing calls by many economists and politicians for abolition of the ministries. However, even the abolition of the ministries does not guarantee the independence of enterprises now subordinate to ministries. One can imagine a scenario in which enterprises are converted into joint stock companies and the ministries are converted into holding companies, each holding the stock of the enterprises for which it was formerly "superior agency." Under the new legislation on joint stock companies, the holding companies, as "owners," would have powers very comparable to those of the existing ministries. But if some form of government ownership and control were not maintained, it would be hard to call the independent enterprises "socialist." Despite the obvious affront to socialist orthodoxy, the government moved in 1986 to legitimate sole proprietorships and in 1988 to legitimate partnerships (calling them "cooperatives").

Since the 1920s, Soviet law has allowed private businesses to operate without "superior agencies," but under severe restrictions. The 1977 Brezhnev Constitution provided, "in the USSR individual labor activity shall be permitted in accordance with the law in the sphere of handicrafts, agriculture, domestic services for the populace, and also other forms of activity based exclusively on the personal labor of citizens and members of their families." Legislation adopted in 1986 and 1987 clarified and enhanced the status of small, individually-owned and
family-owned business. The second major step toward creating enterprises without superior agencies came in 1988 with general legislation authorizing "cooperatives." The label of "cooperative" had a socialist flavor, but the cooperatives in practice were run as private businesses. Some cooperatives were "attached to" and controlled by state enterprises and thus were linked to the old hierarchical system. However, many cooperatives were truly independent private businesses.

At this point--1988, there were really only three available forms for economic entities--state enterprises, cooperatives (really business partnerships), and sole proprietorships. The creation of cooperatives showed that it was possible for economic entities without superior agencies to play a significant role in the economy. However, demands immediately arose for the next step--the creation of those forms of economic entities whose ownership could be traded in a capital market. Full realization of market principles requires that there be a capital market in addition to goods and services markets. In addition, choice of forms of economic organization must be determined by the market, not by a government bureaucracy, as Professor Judith Thornton has perceptively noted. Two more forms of enterprise were necessary to complete the standard market economy selection of business forms--the joint stock company and the limited liability company. The 1990 Law on Ownership, Law on Enterprises, Decree on Joint Stock Companies and Limited Liability Companies, and Decree on Stocks and Bonds move toward satisfying these requirements. They provide for the creation of an ample menu of types of economic entities, and pave the way for creation of a capital market.

The Law on Ownership envisions a wide variety of types of economic entities. These include the labor-based business (trudovoe khoziaistvo), the peasant farm (krest'ianskoe
khoziaistvo), cooperative, partnership, limited liability company, joint stock company, and state enterprise. Of these only the state enterprise would have a "superior agency." The provisions of the Ownership Law go beyond the 1986-87 legislation and beyond the 1977 Constitution. The Constitution, before the 1990 amendments, had limited private businesses to labor-based, family businesses. Article 11 of the Ownership Law went further in two ways. It allowed capital-intensive businesses and allowed participation of non-family members. The participants could own defined shares of the business property. They do not enjoy limited liability. Article 11 thus created a categories similar to those of sole proprietorships and business partnerships in American law. By avoiding the hypocrisy of the cooperative law, which had allowed private business partnerships, but pretended they were socialist, it opened the way for more direct protection of the rights of business partnerships. Likewise the 1990 Constitutional amendments and the Law on Enterprises legitimated business corporations.

Protection Against Interference by Government and Party Bodies Other than a "Superior Agency"

Interference by superior government agencies was never the sole barrier to enterprise initiative in the Soviet Union. A wide variety of government and Party organizations had long overregulated enterprise activities. From time to time attempts were made to curb excesses of this regulation. For instance a 1987 Decree required State Arbitration approval of regulations issued by ministries applying to contracts made by organizations subordinate to other ministries. As economic entities without superior government agencies came to play an increasing role, the emphasis in legislation shifted more and more from protection against
superior agency meddling to protection against unwarranted interference in general. Legislation in 1980s enhanced the power of the Procuracy by allowing it to suspend illegal acts of administrative agencies. The new laws on cooperatives, ownership, enterprises, and the rights of citizens adopted in 1987-90 expanded protection against government regulatory agencies. The 1990 Law on Enterprises was based on the important premise that certain minimum rights should be granted to all types of enterprises, whereas prior law had treated individual, cooperative, and state enterprises quite differently.

Soviet legislation on protection of rights of economic entities developed rapidly in the period 1988-1990, though it remains to be seen if entities will be able to exercise these rights in practice. The 1986 Law on Individual Labor Activity contained no explicit provisions on rights against government interference. However, general legislation adopted in 1987 and substantially strengthened in 1989 gave citizens the right to appeal against illegal administrative actions. The legislation in the 1988 Law on Cooperatives exhorted state agencies to act legally, but provided relatively little in the way of enforcement mechanisms, with the notable exception of allowing the founders to go to court if a cooperative was refused registration. The 1990 Law on Enterprises provided general rights to economic entities to complain of illegal pressures by administrative agencies.

The following section of the 1988 Law on Cooperatives was not only weak and unsatisfactory in wording. By failing to provide effective remedies to cooperatives, it left them largely at the mercy of local officials.

Article 53. On The Guaranty of Observance of the Rights of Cooperatives

Central and local state bodies bear responsibility for the
observance of the provisions of the present Law, shall be guided by them in the adoption of normative documents connected with the practical activity of cooperatives, shall build their relations with them in strict accordance with this Law.

The 1990 Law on Enterprises contained a similar provision, also without an explicit enforcement mechanism.

Article 24. On the Guaranty of Observance of the Rights of Enterprises (or Associations)

Bodies of state authority and administration bear responsibility for the observance of the provisions of the USSR Law on the State Enterprise (or Association) in the adoption of normative documents affecting the practical realization of the present Law, and shall build their relations with the enterprises and associations in strict accordance with the aforementioned Law.

The 1990 Law on Enterprises had a number of provisions that did offer means for enforcement. These provisions are translated below along with bracketed comments by the author of this paper.

Article 6. State Registration of An Enterprise

3. A refusal of state registration of an enterprise may occur on ground of violation of the procedure for founding an enterprise established by legislative acts of the USSR, the union republics, and the autonomous republics, and also for the noncorrespondence of the founding acts (or documents) to the requirements of legislation. Refusal of state registration of an enterprise on motives of the inexpediency of its founding is not allowed.

If state registration is not made within the established period or if it is refused upon grounds which the founder of the enterprise considers baseless, he may go to court.
Note the important limitation that registration can be refused only on the basis of legislative acts. In other words administrative regulations cannot be a ground for refusing registration. The market rather than officials’ discretion is to determine what enterprises are registered.

Article 30. Guarantees of Rights and Interests of Enterprises

1. The state guarantees the observance of the rights and legal interests of enterprises.
   An enterprise, in the conduct of economic and other activity, has the right, on its own initiative to take any decisions not contradicting legislation in force.
   Interference in the economic and other activity of an enterprise on the part of state, societal, and cooperative bodies is not allowed if it does not involve the right of state agencies for the exercise of supervision of the activity of enterprises provided by the legislation of the USSR, the union republics, or the autonomous republics.

This is a milestone in Soviet legislation. It appears to forbid Communist Party interference in enterprise operations. It also forbids individual ministries and state agencies to issue regulations not based on "legislation."

2. Union, republic, and local and local state and societal bodies and their officials, in the adoption of decisions involving enterprises and in their relations with them bear responsibility for the observance of the provisions of the present law.

This provision talks about "responsibility," but does not make clear the procedural mechanisms for enforcing the responsibility.

State bodies and officials may give instructions to an enterprise only in
accordance with their competence established by law. In case of issuance by a state or other body of an act not corresponding to its competence or to the requirements of law, the enterprise has the right to turn to court or State Arbitration with a suit to have such an act recognized as invalid.

Does this imply that the enterprise does not have the right to just disobey the instruction and to contest its validity when the state or other body tries to enforce it?

Damages caused to an enterprise as the result of fulfillment of instructions by state or other bodies or their officials violating the rights of the enterprise and also as the result of improper exercise by such bodies or their officials of the obligations provided by law with respect to the enterprise, are subject to compensation by these bodies. Disputes on compensation for harm shall be decided by a court or State Arbitration in accordance with their competence.

The Law on Ownership promises effective protection of enterprises' property rights:

Article 31. Guarantees of the Right of Ownership

1. The State guarantees the stability of the relations of ownership established in accordance with the present Law.
2. In case of adoption by the USSR, a union or an autonomous republic of legislative acts terminating the right of ownership, the damages due to an owner as the result of the adoption of these acts, by decision of a court shall be compensated to the owner in full measure by the USSR, or the respective union or autonomous republic.
3. The state shall provide by legislation equal conditions for the protection of the right of ownership to citizens, organizations, and other owners.

Article 34. Invalidity of Acts Violating the Rights of Owners

If as the result of the issuance by a body of state administration or a local body of state authority of an act not corresponding to law the rights of the owner and other persons for the possession, use, or disposition of property are violated, the act shall be recognized as invalid on suit of the owner or
the person whose rights are violated.

Damages suffered by citizens, organizations, and other persons as the result of the issuance of these acts shall be subject to compensation in full amount at the expense of funds at the disposition of the respective agency of authority or administration.

Literal enforcement of this legislation could create real threats to "privatization." Suppose a republic decides to distribute the land, buildings, equipment, and livestock of a collective farm to individuals willing to take up private farming. Read literally, the law would require the republic to compensate the collective farm. But with the decline of power at the USSR level, it is unlikely that this law will be effective to hinder republic-level privatization measures.

Protection of Economic Entities' Rights Against Violation by Other Economic Entities

In the past, nearly all productive enterprises were in the "socialist" sector of the economy. These enterprises enjoyed heightened protection under administrative, criminal, and civil law. Under administrative law, state planners sought economies of scale by giving individual enterprises monopolies of particular types of production. Criminal law provided heightened protection to enterprise property, since it was classified as "socialist" property. Civil law exempted suits for the recovery of state property from the statute of limitations.

If the Soviet Union moves to a market economy, there will be need for a whole new area of law, which now exists only in most rudimentary form, law providing protection against unfair competitive practices. Soviet unfair competition law to date consists mainly of a tiny handful of trademark cases, often involving disputes between two foreign firms or a Soviet firm and a foreign firm.24
A full-fledged set of unfair competition laws would deal with monopolization and restraint of trade, false advertising, and intellectual property protection. Soviet jurists are in general agreement on the urgent need for this body of law. However, to date there have been only some faint beginnings, mainly in the area of intellectual property law. Soviet jurists and economists are split on how to deal with monopolies. Some call for "trust-busting" by eliminating the ministries and breaking up large enterprises into small ones. Others consider this process too disruptive and often technically impossible. A great deal of the planned economy was based on the idea that "bigger is better," so that for many essential types of goods there is only one producing factory. This second group believes that monopolies should be controlled by maintaining the present system of government price regulation far into the future.

In intellectual property law, there has been progress in the areas of trade secrets, patents, and copyrights. It was long a Soviet boast that one of the virtues of the socialist system was that socialist enterprises could have no trade secrets from one another. The 1990 Law on Enterprises reverses this policy. Article 33 of this Law on Enterprises outlines rules of protection for trade secrets, but does not provide a workable set of sanctions and enforcement procedures. The Soviet press has published two official drafts of new patent legislation. This draft patent legislation provides a bridge between the old system of inventors' certificates and a new system of real patents rewarding inventors' employers with exclusive rights.25 In copyright, the Soviet Union is planning to amend its legislation to meet the high standards of protection of the Berne Convention and to create a system of protection for computer software.

All students of the Soviet legal system agree that far more legislation regulating competition is urgently needed if the Soviet Union is to have a workable market economy.
Particularly urgent is legislation on unfair competition and monopolistic practices.

Protection of the Rights of Owners of Economic Entities

Introduction

An economy can realize the benefits of a market system only if there are markets in capital as well as markets in consumer and producer goods and services. Capital markets can function only if ownership rights in economic enterprises are well-defined, well-protected, and freely tradeable. A basic flaw of the Soviet system as it stood in 1985 was that ownership rights were non-transferable. Powerful industrial ministries acted as owners of the enterprises subordinate to them. When Khrushchev attempted to transfer their ownership rights, he was deposed and the ministries and their rights were restored.

Long experience in market economies have shown that a relatively small number of forms of ownership of economic entities are both necessary and sufficient for creation of capital markets. These are sole proprietorships, partnerships, small-business companies, and stock corporations. To realize market efficiencies, business owners themselves, rather than the state, should determine which form to use.

During 1986-1990, as mentioned above, the Soviet Union moved to permit all these forms of business ownership. Legislation came first on sole proprietorships. Private business without hired labor had always been legal, but subject to very severe restrictions. Legislation in 1986 liberalized the areas in which sole proprietorships could operate. Legislation in 1988 allowed the formation of limited liability companies, but called them "Cooperatives." These
two pieces of legislation both contained restrictions on the alienability of the owners' interest in the business entity. As a result, there were almost no transfers of owners' interests.

In the spring of 1990, the Supreme Soviet and the Council of Ministers adopted legislation based upon the German model of basic forms of ownership of business entities. These were sole proprietorships, partnerships (including partnerships with limited partners), limited-liability companies, and joint-stock companies (with provision for issuance of bonds and preferred stock as well as common stock). The new legislation goes much further both in allowing transfer of owners' interests and in providing protection against arbitrary taking by the state. It remains to be seen if it will be fully implemented and supplemented with legislation creating a stock and bond market.

Protection of Owners' Rights Against Abuses by Managers of Economic Entities--the Agency Problem

Soviet legislation of the 1930s to the 1980s reflected the continual conflict between enterprise managers and superior organizations. It always was in the interest of enterprise managers to understate their production capabilities and overstate their needs to the planning authorities. Not trusting the managers, the authorities tended to micromanage from above. Will a transition to a market economy solve this problem, which economists call the "agency" problem? The transition can help. The problem does not exist at all in really small businesses--"Ma and Pa stores", where the owners are the managers. In a competitive economy, company managers who cannot make a profit are likely to lose their jobs as disgruntled stockholders revolt or major lenders demand change. However, managers who can make a small profit may use a
variety of legal techniques to remain in place, even though the owner might be better off hiring a different manager or liquidating the business. In the United States, managers have developed clever tactics to protect themselves against the legal owners of their companies—the stockholders. Courts have upheld such measures as management-biased proxy solicitations, poison pills, golden parachutes, and payment of greenmail.

To the extent that these techniques are available to management, owners' rights are not fully protected. In particular, the decree on joint stock companies gives management a number of levers it can use against enterprise stockholders. It will be able to solicit proxies. If it can get management protection provisions into the charter, it will be protected by the requirement of Article 50 of the decree requiring a three-fourths majority for amending the charter or going out of business.

However, the law provides many standard types of protection of stockholders, such as the right to force a stockholders' meeting and get access to audited statement, though not the right, apparently, to get a list of stockholders for use in proxy solicitation.

Protection of Owners' Rights Against Governmental Interference

Owners' interest in an economic entity is a property right. As such it is entitled to protection under the provisions quoted above of the law on property.
Protection of Owners’ Rights Against Co-owners

The law on protection of owners’ rights against co-owners is underdeveloped in the Soviet Union. There has been a substantial amount of litigation by dissatisfied members of housing cooperatives, vacation home cooperatives, and garage cooperatives, complaining of discrimination by the majority owners of the cooperative. Soviet courts have crafted some remedies to guarantee minimum fairness to cooperative members.

The 1990 decree on Joint Stock Companies and Companies With Limited Liability provides explicit protection for holders of minority interests in limited liability companies and less effective protection for some minority stockholders in joint stock companies. Article 80 of the Decree provides:

A participant in a company with limited liability has the right to turn to state arbitration or a court with a request for the recognition as invalid of a decision of the meeting of participants of the society made in violation of the law or the constituent documents on the condition that such a decision is taken in the absence of the participant (or his representative), or he or his representative was intentionally deceived with respect to the nature of the decision or he was in a minority in rendering the decision.

There appears to be no similar article in the provisions on joint stock companies. There are, however, some minimal protections for minority stockholders and for bondholders. Article 50 provides that certain major changes: amending the charter, going out of business, and opening and closing of branches require a three-fourths majority. The minority stockholder can seek proxies, but the decree does not give stockholders access to the list of shareholders. Bondholders are protected by a limit, in Article 36, on the amount of bonds the enterprise may
issue. In case of default, they may enforce their rights by the summary procedure established by Article 36.

Protection of Stock Buyers and Sellers Against Market Fraud

Laws protecting stock buyers and sellers against market fraud remain to be drafted.

Conclusions

After an experimental period from 1985 to 1989 when half-way measures were tried and found wanting, Soviet lawmakers and legal scholars have identified a need for introduction of the complete set of legal institutions characteristic of a working market economy. However, to date, legislation has embodied only part of these institutions. Massive additional work remains if the USSR is to have a viable, law-based market economy.
A permanently socialist state cannot be law-based for yet another reason. A state is permanently socialist if the legal system, the ruling Party-military-police junta, or a "Big Brother" neighbor does not allow the citizenry to change to a non-socialist system through free discussion and free elections. Since such a state is violating basic human rights principles and treaties, it is not "law governed." See the summary of a talk by G.Kh. Shakhnazarov on "Mezhdunarodnye aspekty formirovaniia pravovogo gosudarstva" in "Vsesoiuznaia nauchno-prakticheskaia konferentsiia 'Formirovanie sotsialisticheskogo pravovogo gosudarstva'" , SGIP 1990 No. 5, 23-34.


The limited liability company is found in the law of Germany and many other European countries. As in a joint stock company the owners enjoy limited liability. As in a partnership, the owners own defined shares, but these shares are not represented by tradeable stock certificates.


Decree of the USSR Council of Ministers, 19 June 1990, "On Approval of the Statute on Joint-Stock Companies and Companies with Limited Liability and the Statute on Stocks and Bonds," SP SSSR 1990 No. 15, item 82.

Decree of the USSR Council of Ministers, 19 July 1990, "On Approval of the Statute on Joint Stock Companies and Companies with Limited Liability and the Statute on Stocks and Bonds, SP SSSR 1990 No.15, item 82.


USSR Law, 14 March 1990, "On Institution of the Post of President of the USSR and Making Amendments and Additions to the Constitution (Basic Law) of the USSR," Ved. SSSR 1990 No. 12, item 189.

Decree of the CPSU Central Committee and the USSR Council of Ministers, 12 February 1987, "On Further Improvement of the Activities of Organizations of State Arbitration and Raising their Role in the Strengthening of Legality and Contractual Discipline in the National Economy," SP SSSR 1987 No. 15, item 59.

USSR Law, 30 November 1979, "On the USSR Procuracy," Ved. SSSR 1979 No. 49,
See note 9.

See note 12.

See note 13.


