

**Non-government organization
“Rights & Prosperity”**

Evaluation Report

**Efficiency of legal base for ensuring of
farmers rights**

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Introduction

Republic of Tajikistan is one of the countries in the world, having insufficient land (93% of total territory occupied by mountains). Total square of croplands makes up 720,2 thousand hectares. 502,8 thousand hectares are irrigated. Population of republic increases year by year, but areas of cropland, unfortunately, reduce. In such conditions, there is a key question, concerning to distribution and access to land resources, likewise as supplying with land rights. Tajikistan is agrarian country, therefore, prosperity of countrymen and creation of favorable conditions for them is a necessity for future development of country. On account of this theme there were a lot of researches. In present document organization “Right and Prosperity” decided to review an effectiveness of existing legal base of Tajikistan on ensuring of rights of farmers and conditions for development of Dehkan farms.

Research objectives:

Given evaluation of legislation realized in the frameworks of N(o)vib project and directed on preparation of recommendations for softening of poverty problem among Dehkan farmers; making an attempt to define how domestic legislation in a sphere of land tenure can improve the quality of work and life of Dehkan farmers and potential Dehkan farmers. The final aim is to maintain the process of land reform in Tajikistan with information data by means of drawing-up of recommendations for state bodies and non-government sector and further realization of the same project as well.

Research objects:

1. Constitution of RT;
2. Land Code of RT;
3. Labour Code of RT;
4. Tax Code of RT;
5. Administrative Code of RT;
6. Criminal code of RT;
7. Civil Code of RT;
8. Law of RT “On Dehkan farms”;
9. Law of RT “On establishment of coefficient rate indexation of land duty”;
10. Law of RT “On land evaluation”;
11. Law of RT “On private subsidiary farm”;
12. Law of RT “On organization of the use of land”;
13. Law of RT “On land reform”;
14. Law of RT “On state regulation of maintenance of agricultural lands fertility”;
15. Law “On rent”;
16. Law of RT “On micro financial organizations”;
17. Law “On state customs”;
18. Law of RT “On banks and bank activities”;
19. Law “On labour protection in RT”;
20. Law “On provision of pensions of Tajik citizens”;
21. Law “On social protection of invalids”;
22. Law “On associations of employers”;
23. Law “On social partnership, agreements and collective treaties”;
24. Law “On professional unions, their rights and guaranties for their activities”;
25. Law “On state protection and support of business activity in RT”;
26. Resolutions “On involving of arable lands into agricultural circulation”;

27. Resolution “On approval of regulation on the procedure of registration and delivery of certificates for land usage, license for land share and their value”;
28. Conception of land usage in RT;
29. Resolution “On settlement of debts of reorganized and reorganizing agricultural enterprises and organizations”;
30. Instruction on a manner of calculation and payment of single tax for Dehkan farms
31. Decree of the President of Tajikistan “On reorganization of agricultural organizations and enterprises”.

Dehkan farm and distribution of resources. Primary arrangement of Dehkan farm.

Land relations in the Republic of Tajikistan regulated by Constitution of Tajikistan, Land code and another normative acts of the Republic of Tajikistan.

Constitution of RT says that “the land, land bowels, water, air space, animals and plants environment and other natural resources are an exclusive property of state and the state guarantees an effective usage of these resources for the sake of nation”. Other legal acts have to be appropriate to Constitution.

Issues of resources distribution (in particular the land distribution), buildings and constructions regulated by Land Code, Civil Code, Law “On land reform”, Law “On Dehkan farms”, Law “On rent”, Law “On organization of the use of land” and Decree of the President of Tajikistan “On reorganization of agricultural organizations and enterprises”.

One of the key questions, making inhabitants be anxious about, during the process of Dehkan farms creation – is distribution of property of collective and state farms. Reorganization of former collective and state farms demonstrated an imperfection of legislation in given question.

Since the beginning of the reform, that is from 5 March 1992, when the Law “On land reform” was adopted, an attention to the process of distribution of property of collective and state farms was not given. In this law is only noticed about distribution of land by abovementioned institutions. The land should be cultivated and for this purpose tractors and other kinds of agricultural technics are required.

Decrees and resolutions of president, adopted later, tried to fill the gap in a question of distribution of property of collective and state farms. They are as follows the **Decree of the President of Tajikistan from 25 June 1996 #522 “On reorganization of agricultural organizations and enterprises”** and **“Regulation on reorganization of agricultural organizations and enterprises”**.

Regulation secured the right on land and material share for worker of reorganizing enterprise. Particularly, in part 2 point 3 said that if labour collective of enterprise adopts a decision to retain former shape of property, it should supply worker with unconditional right of leaving without consent of labour collective or administration, including **land and material detachment** after his coming out.

According to Civil Code of RT, reorganization – is amalgamation, addition, partition, allotment and transformation of juridical person.

Reorganization of juridical person (in particular case – reorganization of collective or state farm) may be accomplished under the decision of general meeting of farm members (part 3, point 2 of regulation “On reorganization of agricultural organizations and enterprises”).

During the process of reorganization of juridical person in a form of partition the dividing balance should be composed, according to which all rights and obligations of reorganized juridical person pass on to anew originated juridical persons (article 59 of Civil Code of RT). Dehkan farms, created as juridical persons since 1992 to 2002 were the assigns of former collective and state farms and according to dividing balance, they had to receive rights and obligations on property command. However, the Civil Code of the Republic of Tajikistan, including the present definition of reorganization, came into force only on 1 January 2000. Since 1992 to 2000 reorganization of state and collective farms was conducted according to Law “On land reform” (as it was mentioned before this document does not include issues regarding to allotment of property share), to Decree of the President “On reorganization of agricultural organizations and enterprises” and to Regulation “On reorganization of agricultural organizations and enterprises”. In two previous standard acts the efficient mechanism of

determination and distribution of property share between members of collective and state farms does not exist.

According to article 274 of the Civil Code of RT, the recognition of state and collective farms property as public property can serve as a ground for partition between members of collective farm not only allotments, but materials as well. Article 274 of the Civil Code of RT reads as follows: *Collective property can be defined as a property of juridical person, belonging to such associations as rent enterprises, collective enterprises, co-operatives, collective farms, joint-stock companies, economic associations and companies, public and religious organizations, makhali and to other juridical persons.* Hereby, since the property of collective farm have considered as collective property, according to part 2 point 1 of article 275 of the Civil Code of RT the whole property of collective enterprise, including manufactured production and benefits, is a public possessions of collective. It follows that, during the process of reorganization each member of former collective farm is obliged to receive early defined property share.

As regards the property, lying in territory of collective farms and actually is not belonging to farmers, it should be distributed according to Regulation "On reorganization of agricultural organizations and enterprises" in the following way:

Objects of social-cultural significance are bringing to djamoats.

Intraeconomic and intereconomic objects of melioration and water industry, objects of road network, gasification, electrification, water supply, communication and other service lines may be hand over for balance of appropriate ministries and departments.

The usage of abovementioned object is realizing through appropriate payment.

Objects and property completely or partially constructed or purchased by collective farms on budgetary funds, are evaluating separately and the question of their handing over or realization is deciding by state commission at the suggestion of work committees at the local level.

Huge objects (as live farming, feed processing buildings, engine yard, repair shops, storage facilities and other), which partition is impossible on production and technical conditions and inexpediently in economic way, are redeeming or leasing predominantly among workers of these objects.

The right on redemption have:

employees of enterprises, irrespectively from their position or working duties, who are the members of a staff at a point in time of reorganization;

employees, temporarily defaulting on valid account;

pensioners, directly retired from this enterprise;

persons of a list of employees of enterprise, selected for elective for on different levels;

persons from this enterprise, engaged for service in military forces;

persons, directed to study or improving of their qualification;

working collective can also adopt a decision to include it this register workers of social sphere objects, situated on a territory of the enterprise; to include former workers or persons, discharged from the enterprise under the cause of reduction of the staff after 1 January 1993 as well.

A question in which way the funds of bought out objects are distributing, does not examine by the following Regulation. However according to article 275 of the Civil Code of RT, they should be equally distributed between former employees of collective state farms.

Decree of the President "On reorganization of agricultural organizations and enterprises" (from 25 June 1996) stipulates for lump sum compensations for persons, who did not receive the right on using of land or another property. Lump sum payment should be realized at the expense of funds, received from realization of property of reorganized enterprise.

On the one hand, this provision grants the right for compensation for persons, who did not receive land shares or another property in accordance with some circumstances. It is positive aspect. On the other hand, it contradicts with Civil Code in issue, that funds, occurring after the sale of collective property should be distributed between members of collective farm. Civil Code

does not provide accumulation of funds after the sale of collective property for lump sum compensation.

Issue on initial constructions fastened in the Law “On Dehkan farms” of the Republic of Tajikistan.

State (according to article 10 of the Law “On Dehkan farms”) is responsible for construction of roads network, maintenance of transmission facilities, water supply, installation of telephones and land melioration. Article 10 of the Law “On Dehkan farms” says that “*During the organization of Dehkan farm on a territory, depleted of objects of industry, social and domestic purposes, the state is obliged to undertake initial constructions of this territory, construction of roads network, transmission facilities, water supply, installation of telephones and land melioration*”.

Further, point b article 26 of the Law “On Dehkan farms” provides for right of Dehkan farm on immunity from paying for connection to electrical power system or water supply (without usage of buildings or technical equipment).

However, neither in one case, nor in other there is no legally durable mechanism of realization of these rights.

Resume:

Since the beginning of reforms the question on distribution of property of collective and state farms was not regulated. As a result, Dehkan farms practically left without techniques and other equipment. Since 1992 this issue was tried to be regulated, but still unsuccessful. Gaps in legislation, concerning to distribution of land and property of reorganized enterprises can promote to misappropriation of lands and property by former directors of state/collective farms. Problem of property distribution is still urgent, but state authorities do not make efforts to solve it. Even using provisions of present legislation, Dehkan farmer has an opportunity to receive property share in present moment. However, practice displays, that practically any farmers do not enjoy this right.

From the direction of state in capacity of support, the right on initial construction of Dehkan farms is providing. It’s legally fastened.

1. There is no mechanism of rights realization.
2. There are no funds, anticipated by budget, for development of new-founded Dehkan farms.

Therefore, article 10 of the Law “On Dehkan farms” is invalid, so as article 26 point b of the same act.

Recommendations:

1. Legally secure the mechanism of distribution of share between employees of collective and state farms in the form of instructions. It would help to Dehkan farmers to fight for their interests in a court.
2. To work out the mechanism of land receiving for persons, who were not received land share during reorganization of agricultural enterprises due of some causes, but wishing to work on a land.

Dehkan farm and business activity:

Different forms of property constitute the base of economy of Tajikistan. The state guarantees freedom of economic and business activity, possession of equal rights and legal defense of all forms of property, including private property. (**Article 12 of the Constitution of RT**)

Legislation, concerning to usage of land, Dehkan farms and business undertakings, grants following business rights to Dehkan farmers:

- right of citizen on creation of Dehkan farm;
- right on self-dependent determination of activity;
- right of free choice of culture;
- right on bank crediting and micro-credit organizations crediting;
- right on gratuitous setting an account;
- right on improving of qualification at the cost of funds, stipulated for support of small-scale and medium-scale business;
- right on inviolability of subjects of business activity;
- right on free choice of counteragents;
- right on development.

Legal base for business activity of Dehkan farms contains the following;

the Law “On Dehkan farms” and the Law “On state protection and support of business activity in RT”.

The primary legal act, regulating business activity, is Civil Code of the Republic of Tajikistan (adopted 30.06.1999), where stipulated relations between persons, realizing business activity (point 3, article 1). Here in part 2 is mentioned that **business activity** is self-dependent, conducting on own risk activity, directed on systematical receipt of profits from usage of property, commodities sale, fulfillment of job or rendering of service for persons, interested in this quality in accordance with established procedure.

The following document, determining business rights of Dehkan farms, is the Law “On Dehkan farms” (from 10.05.2002).

According to article 5 – 6 of the Law “On Dehkan farms”, Dehkan farm along with commercial organizations and individual businessmen is defined as *equitable unit of economic system*. Thus it gives right to Dehkan farm to conclude contracts, independently choose its kind of activity, use credits and various advantages on equal conditions with individual businessmen and juridical persons (realizing business activity).

Likewise this list of legal acts could be added by the Law “On state protection and support of business activity in RT” (from 10 May 2002 #46).

In order to develop analysis of legislation, concerned to business activity of Dehkan farm, we should examine the forms of creation of Dehkan farm.

Dehkan farm may have the following forms:

- a) **Dehkan farm, founded on individual business undertakings;**
- b) **Dehkan farm, founded on joint estate and realizing activity in a form of family business undertaking;**
- c) **Dehkan farm, founded in a form of simple association on a base of joint share property and established on contract of combined activity.**

According to article 6 of the Law “On state protection and support of business activity in RT” – individual business undertaking is self-dependent activity of natural person, realizing by him without founding of juridical person, sui juris, at his own risk with responsibility for usage of private property, directed on receipt of profits (incomes). In given case, it is mentioned about Dehkan farm, represented by one person – individual businessman. Individual businessman in such Dehkan farm is a head of this farm.

Next form of Dehkan farms is a *farm, which business activity realized in a view of family business undertaking and based on joint estate*. **This form is also not anticipated by Civil Code of the Republic of Tajikistan.**

As regards the Dehkan farm in a form of association, its essence is exposed in Civil Code of RT (article 1058).

In this document said, that individual businessmen or commercial organizations can make up simple associations by means of ratification of contract on combined activity. According to contract on combined activity, two or more persons oblige to join their inputs and

operate together without founding of juridical person for extraction of profits and other objectives, which do not contrary to law.

Contract on combined activity have to be concluded in written form.

Directly adverted to realization of rights of Dehkan farms one might notice, that:

The first right is “*The right on creation of Dehkan farm*”. The Law “On Dehkan farms” (from 10 May 2002) says, that each citizen of the Republic of Tajikistan has a right to create Dehkan farm (part 1 article 6). Article 66 of the Land Code also says, that “ground areas are granted on a base of life heritable tenure for those citizens of the Republic of Tajikistan, who expressed the desire to manage the Dehkan farm. A primary right enjoy those citizens, who are the members of collective farm or employees of state farm in the age from 18 to 60.”

“In cases, when the number of persons interested in receipt of land area for life and heritable tenure exceeds total amount of apportioned lands, then district land committee scrutinizes issue on granting of land areas for life and heritable tenure on a base of former experience of farm management of each of candidate. Candidates with major experience receive land areas first of all.” (Land Code of RT from 13 December 1996 #23).

An order of land accordance for managing of Dehkan farms is also stipulated by the Land Code of the Republic of Tajikistan. A period for preparation of necessary documents and pronouncement of solution is determined at the rate of one month since the moment of filing of application by district land committee.

The right on self-dependent determination of a kind of activity and free choice of culture is fastened in article 5 of the Law “On Dehkan farms”. This article says that “**Dehkan farm self-dependently determines its structure and way of manufacture, taking into account its own interests and can realize any kind of activities, do not prohibited by legislation of the Republic of Tajikistan**”.

It’s necessary to notice, that Dehkan farm is created for producing of agricultural production. (article 3 of the Law “On Dehkan farms” from 10 May 2002). However, in abovementioned act **there is no definition of agricultural production**. It is not distinctly defined what kind of production can be considered as agricultural production. These facts give rise to number of problems, concerning to realization of this right. For example, is there an opportunity for Dehkan farm to be occupied with cattle breeding, fish-breeding, horticultural establishment or viticulture, if further on a land, apportioned to Dehkan farm such production wasn’t existed. The kinds of agricultural activities, prohibited for realization for Dehkan farm, should be clearly defined by legislation.

An only prohibited way of agricultural production is growing of narcotic plants.

The right on crediting from the direction of banks fastened in the Law “On Dehkan farm”. Article 21 of the given Law says, that Dehkan farm can use credits, distributed by all-level banks, according to contract, defining conditions of crediting. Repayment of a credit by Dehkan farm is realizing by means of deposits or other kinds of obligations. Besides, article 26 of the same Law says that Dehkan farms might receive credits in commercial banks. Likewise in the Law “On state protection and support of business activity in RT” the state takes upon itself an obligation for support of business activity by means of creation of preferential terms, including crediting (point 2 part 2 article 23). But in addition to these rights, fastened in two legal acts, **the mechanism of their realization still is not elaborated. There are any legal acts**, obliged banks of all levels to elaborate mechanisms and preferential terms of crediting for Dehkan farms. Article 21 of the Law “On Dehkan farm” defines the number of crediting organizations and include in the register all-level banks only. The Law “On micro financial organizations”, adopted on 17 May 2004, gives rights on credit delivery for micro financial organizations, which are not considered as banks.

Financial activity of Dehkan farm is realizing with a help of bank or another account, including dollar account. According to the Law “On Dehkan farms”, Dehkan farms enjoy right for gratuitous establishing of account in commercial banks.

The right on development, including the right on improvement of qualification and staff preparation, is also fastened by lawmakers. In particular, the Law “On Dehkan farm” says that the state provides facilities for Dehkan farm by means of improvement of qualification and staff preparation **at the expense of funds, provided for support of small-range business undertaking**. In the Law “On state protection and support of business activity in RT” **provided assistance** from the direction of state **in creation of funds for support of business undertaking**. Although the support of business undertaking is the priority direction of state, testified according to “Conception on business undertaking development in the Republic of Tajikistan for the period until 2015”, the state budget for 2005 do not provides item of expenses for support of business undertaking.

The right on inviolability of subjects of business activity is one of the prior rights, provided for development of Dehkan farms. It consists of such components as:

- right for self-dependent manage of land;
- right to be a proprietor of produced production and profits for their realizations;
- right on free choice of counteragents;
- right to conclude contracts for realizing of business undertaking;

Given rights are fastened into the Law “On Dehkan farm” and the Law “On state protection and support of business activity in RT”. The right of Dehkan farms on inviolability of their business activity is founded not only on rights of Dehkan farms, but and on prohibition of interference of different persons in their activities.

For example, the Law “On Dehkan farms” defines, that “interference into economic activity of state farm from the side of state boards is not admitted, with the exception of grounds, provided by legislation”.

The Criminal Code of the Republic of Tajikistan provides criminal liability for accomplishment of following activities, according to article 258:

“Illegitimate refusal in registration or deviation from registration of individual businessman, enterprise or commercial enterprise; illegitimate refusal in issue or deviation from issue of special permission (license) for realizing of appointed activity; illegitimate limitation of rights and interests of individual businessmen, enterprise or commercial enterprise or other illegal interference in their activities, realized by official with using of administrative forces”. The same article provides punishment by means of fine at the rate from two hundred to five hundred minimum salary dimension.

Realization of economic activity demands close cooperation of Dehkan farms with different juridical and natural persons. Relations between sides should be founded on volunteer character. Dehkan farm has the right on free choice of counteragents, which is those persons, who are profitable for cooperation. It’s prohibited for state boards and departments to give instructions to businessmen on delivery of goods (job realization or rendering of service), defined by consumer (article 14 of the Law “On state protection and support of business activity in RT”). Article 453 of Civil Code of RT says that “citizens and juridical persons are free in concluding of contracts. The compulsion to concluding of contract is not admitted.”

Resume:

Lawmaker grants to Dehkan farmer equal rights and opportunities, as for individual businessmen, and considers him as equal unit of state economic chain. However, the forms, anticipated by the Law “On Dehkan farm”, do not foreseen in Civil Code of the republic. It

doesn't promote for realization of rights, stipulated by legislator. It's necessary to notice, that even during the present state of affairs, the members of Dehkan farms can achieve and realize their business rights.

The Law "On Dehkan farms" anticipates variety of business rights for farmers, but still there are problems with their realization, due of absence of drawn mechanism for their realization.

Recommendations:

1. The forms of farm management, anticipated in the Law "On Dehkan farm", should be legislatively defined, that is, for example, to generate the definition of meaning "family business undertaking".
2. To adopt the document, defining kinds of agricultural producing, therefore to promote the development of Dehkan farms.
3. In the Law "On Dehkan farm" the changes, concerning to permission of credits receipt from micro-financial organizations to Dehkan farms, should be applied.
4. To work out mechanisms for crediting and favorable crediting of Dehkan farms, including participation micro credit organizations.
5. Local authorities should concentrate their attention on development of business undertaking in their districts, according to Conception on business undertaking development in the Republic of Tajikistan for the period until 2015.

Taxation of Dehkan farms:

The issues of taxation of land owners are regulated by Tax Code of the Republic of Tajikistan (from 3 December 2004). A new adopted Tax Code noticeably affects tax system of the republic. There 17 kinds of taxes:

1. income-tax for natural persons (tax for incomes of natural persons);
2. profit tax for juridical persons;
3. value added tax (VAT);
4. excises;
5. social tax;
6. land tax;
7. tax for using of entrails;
8. tax for using of roads network;
9. tax, paying on non-expert system;
10. single tax for producers of agricultural production;
11. custom duty and other custom outgoing;
12. state outgoing;
13. sale tax (cotton and aluminum);
14. minimal tax in incomes of enterprises;
15. real estate tax;
16. tax for owners of vehicles;
17. tax on retail sales;

At the present moment the following tax payments are envisaged for Dehkan farms, by the Tax Code of RT:

1. single tax for producers of agricultural production;
2. social tax;

3. income-tax (pays by members of Dehkan farm, appearing juridical person);
4. local taxes, including:
 - a. real estate tax;
 - b. tax for owners of vehicles;
 - c. tax on retail sales;
5. value added tax (except VAT on supplying of agricultural production, which was grown on a territory, imposed upon single tax);
6. tax for using of roads network (except the tax with usage of roads network during delivery of agricultural production, which was grown on a territory, imposed upon single tax).

Conducting analysis of the new Tax Code with provisions of the previous code and instruction on order of calculation and payment of single tax for Dehkan farms, we can see perceptible difference in presumptive, approved version of single tax payment with the tax, presented in Tax Code (from 3 December 2004).

First of all, the rate of single tax is established in four times the amount, but not in eightfold amount of land tax. However, visible diminution of repetition factor does not decrease total amount of tax in view of the fact that the rate of land tax for lands of agricultural meaning has extended in twice. *“In cadastral regions of republic it’s necessary to increase the rates of land taxes on agricultural estates, that is on croplands, perennial trees, mowing lands and pastures into 1,5 or 2 times and to direct these additional funds only on new land-reclamation and on amelioration of existing lands”*(Conception on land usage of RT, adopted on 31 August 2004 #349).

But lawmaker has foreseen the decreasing of rate of single tax, practically used for cotton growth, and has established double size of land tax. Obviously it was done for attracting/motivation of Dehkan farms for cotton growing.

In the second place, it is stipulated by the new Tax Code for single tax payers the existence of addition payments of local taxes, what is weighed down the tax burden for Dehkan farms. Further, the Tax Code has not provided for payments of local taxes for those, who pay single tax.

Let’s analysis some of tax kinds, envisaged for Dehkan farms:

1. Single tax for producers of agricultural production. “Taxpayers of single tax for producers of agricultural production are juridical persons and Dehkan farms, economic associations, founded on their base or works cooperative using land areas as a main source of production” (point 1 article 306 of the Tax Code of RT). Dehkan farms in a form of individual businessman, paying off the amount of single tax, provided by article 308 of the Tax Code of RT, reasoning from total land square of this Dehkan farm.

The order and liabilities of payment of single tax by Dehkan farm in a form of family business undertaking and founded on combined property, is not defined. There is any clear order of such payment due of vagueness of the form of given farm. The head of Dehkan farm pays this tax, but in what way the tax is paying and how it should be managed with other members of Dehkan farm is not defined normatively.

The same situation is in Dehkan farms in a form of simple association.

2. Each member of Dehkan farm pays social tax, based on monthly benefit, declared by him. However, Dehkan farms do not receive benefits monthly. So, a special order of social tax payment for members of Dehkan farms should be defined.

3. Income tax is only paying by members of Dehkan farm, who are juridical persons. “Benefit of member of Dehkan farm, do not serving as juridical person, received because of agricultural activity of Dehkan farm, liable to assessment of single tax for agricultural producers, becomes free of income taxation”.

4. Local taxes, disbursed by Dehkan farms:

- a. real estate tax, if such is existing in Dehkan farm, paying by directors of Dehkan farm;
- b. tax for owners of vehicles, paying to state motor licensing and inspection departments under the Ministry of Internal Affairs of RT.
- c. the way of distribution between members of Dehkan farm of the amount of tax on retail sales is also not defined.

Resume:

- 1. There are any clear procedure of distribution of rights and responsibilities between director and members of state farm in a process of taxation.
- 2. The special way of payment of social tax by members of Dehkan farm is not defined, as they do not have monthly profit for paying these social dues.

Recommendations:

- 1. Lawmakers should elaborate comments for taxation process for all types of Dehkan farm, because of vagueness of their forms;
- 2. To define a special order of payment of social tax for members of Dehkan farm, since they haven't monthly benefit.

Labour legal relationship in Dehkan farm:

Labour legal relations, including relations in Dehkan farm economy, are regulating by Labour Code of the Republic of Tajikistan.

Let's examine forms of Dehkan farm, provided by the Law "On Dehkan farm" (from 10 May 2002)

Dehkan farm can include the following forms:

- a. Dehkan farm, founded on individual business undertakings;
- b. Dehkan farm, founded on joint estate and realizing activity in a form of family business undertaking;
- c. Dehkan farm, founded in a form of simple association on a base of joint share property and established on contract of combined activity.

Dehkan farm, founded on individual business undertakings

Dehkan farm, founded on activity of single person, who serve as individual businessman. In Dehkan farm of such type, individual businessman is a director of Dehkan farm and labour relations are only concerned with social insurance of individual business and hiring of wage laborer.

The Law "On state protection and support of business activity in RT" (from 10 May 2002), including definition of individual businessmen, says that "individual business undertaking - is self-dependent activity of natural person, realizing by him without founding of juridical person, sui juris, at his own risk with responsibility for usage of private property, directed on receipt of profits (incomes)."

Labour Code of the Republic of Tajikistan (from 15 May 1997) does not provide distinctive features for regulation of employees, working on employers, which are natural persons. Distinctive features of work regulation of employees, working on a base of seasonal nature, do not provide as well. Then, relations concerning to accordance of paid leave, social dues payments are not regulated for these categories of employees. Employer (customer) has a

right to conclude contracts on rendering of service from the direction of employee, however, this contract should contain issues on social protection of employee.

Let's examine the following form that is Dehkan farm, founded on joint estate and realizing activity in a form of family business undertaking.

Organization of economic activity has in mind, particularly, the organization of labour interrelations as well. In given case due of vagueness and uncertainty of this form of management (in Civil Code of the Republic of Tajikistan such form does not imply) the order of labour interrelation between director and members of Dehkan farm is not distinct. If each member of Dehkan farm, including director of Dehkan farm, operates as an individual businessman, therefore what is the process of labour interrelations between director and members of Dehkan farm and what is the order of settlement of labour disputes? The Law "On state protection and support of business activity in RT" implies the concluding of labour contracts from the side of *businessman* with employees, but in given case the members of state farm are not in capacity of employees, because they have own land shares. In Dehkan farm, founded in a form of family business undertaking as in Dehkan farm, founded in a form of simple association on a base of joint estate, between members of Dehkan farm a collective labour contract should be concluded. Contract defines labour interrelations. The Labour Code of The Republic of Tajikistan contains definition of collective labour contract. But the provisions of the Law "On social partnership, contracts and collective contracts" (from 25 November 1992, # 725) in a present edition can not be adopted for regulation of relations between members of Dehkan farms. Point 2 article 15 of the given law says that "the sides of the contracts, presented by Professional union, employer (owner) or his plenipotentiary". The director of Dehkan farm can not be considered as **employer (owner)** relative to **members** of Dehkan farm, because all members of Dehkan farm, including director, have their own land share. The head of Dehkan farm has to have another status, than employer. The head of Dehkan farm, according to article 7 of the Law "On Dehkan farm", serves as the representative of interests of Dehkan farm in cooperation with natural, juridical persons and state bodies as well.

Dehkan farm, founded in a form of simple association on a base of common share property and operating according to contract on mutual activity. The form implies the existence of a contract in written form, concluded by members of Dehkan farm – the contract on joint activity. Rights and obligations of members of Dehkan farm are implied by the terms of contract on joint activity. The Civil Code of the Republic of Tajikistan adequately defines terms of concluding of contract on joint activity between members of Dehkan farm.

Recommendations:

1. To define clearly the status, rights and obligations of members of Dehkan farm, operating in a form of family business undertaking, founded on joint estate;
2. To define legislatively the order of labour interrelations between director and members of Dehkan farm;
3. To define the procedures of design, concluding and realization of collective contracts and agreements between members of Dehkan farm;
4. To define legislatively the peculiarities of regulation of labour of employees, working on employers (natural persons) and the peculiarities of regulation of labour of employees, occupied on work of seasonal nature.

Let's examine issues of social ensuring of Dehkan farms.

Article 39 of the Constitution of the Republic of Tajikistan says that "social ensuring is guaranteed for each in old age, in case of illness, disablement or disability, wasting of bread winner and in other cases, stipulated by law". According to point "b" article 3 the Law "On

provision of pensions for citizens of the Republic of Tajikistan” individual businessmen, including members of Dehkan farms, identified as persons, having rights on labour pensions, namely “persons, realizing individual business activity, including terms of individual (collective) rent of Dehkan farm or private usage of Dehkan farm, on the assumption of payment of insurance dues into Fund of social protection of population of the Republic of Tajikistan”. Actually, individual businessmen, including members of Dehkan farms, are liable to state ensuring, because monthly they pay the amount of patent, including social dues, according to point 4 part 1 article 259 of the Tax Code of the Republic of Tajikistan. In part 5 article 88 of given law in section VIII “Pension assignment” says that “application on pension assignment for other citizens and members of their families peculiarly hands to district (municipal) department of social ensuring, domiciliary to applicant”. Individual businessmen are not identified in a separate point of given article; therefore, pension ensuring for them should be realized according to this article. But in section VII “Pension calculation” of the Law “On social insurance of citizens of the Republic of Tajikistan” there is any distinct procedure of pension calculation for such category of employees.

The order of payment of allowances is also not define distinctly. In article 1 of the Law “On state social ensuring” saying that “state social ensuring is a system of guaranteeing conditions for insurant persons, providing by state under their waste of wages or profits due of illness, labour mutilation or occupational disease, disability, pregnancy and accouchement, old age, unemployment, waste of bread winner, death and other cases, stipulated by laws of the Republic of Tajikistan, at the expense of obligatory amount at risk, paid by employers and citizens.” As it was mentioned before, members of Dehkan farms are liable to state social ensuring (Tax Code of the Republic of Tajikistan). However, in the Law “On state social ensuring” in article 5 individual businessmen are not identified as persons, liable to state social ensuring. In regulation “On order of maintenance with allowances under state social ensuring in the Republic of Tajikistan” these persons are not mentioned as well. Furthermore, point 2 of given regulation says that “Allowances... are intended for employees, operating in enterprises, institutions and organizations of all forms of property (**which conduct calculation of labour hours**) upon labour agreement (contract), according to Labour Code of the Republic of Tajikistan and are liable to state social ensuring according to Law of the Republic of Tajikistan “On state social ensuring”. Individual businessmen do not conduct calculation of labour time; at least, such order is not stipulated. The issue on pension ensuring and allowances demands to be obtained through legislative regulation. The Law “On Dehkan farm” from 5 March 1992 provided for founding of Dehkan farm in a form of juridical person, so the questions of social ensuring decided in accordance with legal acts, stipulated issues of social ensuring for juridical persons. With adoption of the new Law “On Dehkan farms” from 10 May 2002, many issue demand to be explained and legislatively regulated.

On 17 May 2004 in the Republic of Tajikistan the Law “On employers associations” was adopted. The subject of regulation of given law is concentrated on public relations, nascent in light of realization of right of employers on association in an effort of presentation and protection of their interests and rights in a sphere of social-labour relations.

Dehkan farms, or rather the heads of Dehkan farms, can also create “associations of employers”, since they are employers. Employer – is appropriate body of state power, juridical person and his representations and subsidiaries and also may be presented by natural person, for which the right on concluding and denunciation of labour agreement (contract) with employee is granted by state legislation, according to point 3 article 15 of the Labour Code.

Members of Dehkan farm can also join together for protection of their interests, according to the Law “On professional unions, their rights and guaranties for their activities”.

Resume:

Legislation, concerned to labour relations, in a practical manner does not correspond to present market conditions. The issues of individual businessmen's work hour's calculation, determination of seniority and labour interrelations inside of Dehkan farm, especially between director and members of Dehkan farm still are not regulated.

Unsatisfactory condition also has social securing of members of Dehkan farms. Nowadays, when Dehkan farm does not enjoy the status of juridical person, it's obscure, in which way social dues would be paid for member of Dehkan farm. Individual businessmen pay social tax, prescribed by Tax Code of the Republic of Tajikistan. Funds, collected at the expense of social payments, should be directed to social maintenance of socially-assured persons. However, lawmaker did not define mechanisms of receiving of social dues, so as dues for temporary incapacity for work, dues for pregnancy and accouchement etc.

Recommendations:

5. To define distinctly the status of Dehkan farm and its members. To define legislatively the order of labour interrelations between director and members of Dehkan farm;
6. To define the procedures of design, concluding and realization of collective contracts and agreements between members of Dehkan farm;
7. To define the procedures of assignment and calculation of pensions for individual businessmen, including members of Dehkan farms;
8. To define the procedures and mechanisms of payment of social dues to individual businessmen, including members of Dehkan farms.

Dehkan farms and associations of Dehkan farms

The right on association is provided by Constitution of the Republic of Tajikistan. Article 28 of the Constitution of the Republic of Tajikistan says that "Citizens have right to join together in a form of association. Citizens are entitled to participate in creation of political parties, including those, who have democratic, religious or atheistic character; professional unions and other public associations; to join and to leave them on a volunteer basis".

Associations are public institutions.

The Civil Code of the Republic of Tajikistan gives the following definition of Association. Association is a union of commercial organizations in an effort of coordination of their business activities, representing and protection of mutual material interests. Commercial organizations serve as juridical persons (article 48 and 50 of the Civil Code of RT).

The Law "On Dehkan farm" is also provide for creation of associations of Dehkan farms: "Association establishes by means of free-will union of self-dependent Dehkan farms" – according to article 28. As it was mentioned above, only juridical persons can participate in associations. So, the Law "On Dehkan farm" stipulates for creation of native without establishment of juridical person. It means that the form of association does not approach for union of Dehkan farms. Lawmaker has to regulate given question by means of modification of wording "association" or provide another form for union of individual businessmen. Until this moment associations of Dehkan farm, created in Tajikistan, exist illegitimately.

"If under the decision of participants association (union) entrusted with management of business activity, given association (union) is liable to modification into economic society or joint-stock company by way, stipulated by given Code. For realization of business activity associations (unions) have the right to create economic societies and to participate in them", according to part 2 point 1 article 133 of the Civil Code. It appears from this, that association of Dehkan farms does not have the right to undertake commercial activities and just might coordinate the activity of Dehkan farms, to represent and to protect their interests.

In article 28 of the Law of the Republic of Tajikistan (from 10 May 2002) provided that “association creates by means of free-will union of self-dependent Dehkan farms. Association functions on a basis of constitutive agreement and charter, approved by participants; serves as juridical person and domiciliary registers in departments of justice.

Dehkan farms, belonging to association, maintain their self-dependence, the right on land tenure and are under the force of given law.

Activities, guided to force joining of Dehkan farm to association are forbidden.” It favors to protection of Dehkan farm from interference to their activities from the side of associations.

The rights of members of Dehkan farms association are also protected by Civil Code of RT, which says that “member of association can leave association in the end of the finance year, following his inclination” (point 2 article 135).

Dehkan farms association operates in accordance with Constitution of the Republic of Tajikistan, Civil Code of RT, Law “On Dehkan farm” and with other legal acts. Constitutive documents of Dehkan farms association are: “constitutive agreement, signed by its members and charter, approved by them”.

The management of Dehkan farms association regulates by article 29 of the Law of the Republic of Tajikistan “On Dehkan farms”: “The dominant body of management of Dehkan farms association is a meeting of participants. Council of associations, leaded by director, realizes executive functions and coordinative activity of association.”

Resume:

Dehkan farms associations are the one kind of public unions. According to domestic legislation, associations are not state and not commercial institutions. Establishment, entrance and withdrawal from Dehkan farms association are free-will. The major objective of association is to protect the interests of its members. The dominant body of management of Dehkan farms association is a meeting of participants. The head of association is electing by association members during the general meeting.

The state, in accordance with law, should provide the loyalty and realization of legal interests of public institution and vouch for realization of conditions, stipulated by their charters. Interference in activity of association from the side of state boards and officials is forbidden.

Recommendations:

1. The form of association provided by law as a union of juridical persons. Lawmaker has to examine the issue of enlargement of definition “association”. Association – is a union of juridical and natural persons in effort of...

Courts of arbitration

Nowadays, in the Republic of Tajikistan there is any indivisible legal act, which would regulate the process of creation and work of arbitrary courts. However, legal acts, existing in Tajikistan as anew adopted as adopted in soviet time period (they are valid in part, which does not contradict with Constitution, laws and international treaties of RT) create definite legal base, which is enough for pilot introduction on practice in Tajikistan the arbitrary courts.

Fundamentally important norm contains in point 1 article 11 of the Civil Code of the Republic of Tajikistan from 30 June 1999. It provides that “protection for violated or questioned civil rights realizing by the court, economic court and arbitrary court (later – the court) in accordance with jurisdiction, prescribed by remedial legislation”. It means that if in civil

legislation is mentioned that disputes could be settled by courts, than arbitrary court has a competence to examine such dispute under the consent of sides.

Allusion about arbitrary court in the same extent with state courts demonstrates that arbitrary court is recognized by state and its decision possess legal power as decisions of state courts – courts of general jurisdiction and economic courts.

Civil- procedural Code of the Republic of Tajikistan from 28 December 1963 contains regulations on arbitrary court, which applies in a part, which does not contradict with current legislation until the adoption of new appropriate legal acts of RT. Transfer of disputes on approval of arbitrary court is stipulated by article 18 of the Civil-procedural Code of RT: “In cases, stipulated by laws or appropriate international treaty, the dispute, originated from civil legal relationship, under the consent of sides can be transferred to approval of arbitrary court, nautical arbitrary commission or foreign trade arbitrary commission under the Chamber of Commerce and Industry of USSR”. Regulations of given article are outdated relatively to arbitrary courts of former USSR, however, the existence of similar article in the code and opportunity to transfer disputes on approval of arbitrary court under the consent of sides, gives complete ground for citizens to use this opportunity for protection of their rights. Article 18 receives the development in Supplement #2 to Civil-procedural code of RT “Regulation on arbitrary Court”.

“Regulation on arbitrary court” provides that “citizens may transfer any dispute, appeared between them, on examination of arbitrary court, except disputes, following from labour or family relations”. Transfer of dispute on examination of arbitrary court is realizing on the grounds of written agreement between sides. Regulation defines the order of judge’s election, criteria for persons, wishing to be an arbitrator; rights and obligations of sides and arbitrary court as well; procedure of decision-making and fulfillment of this decision. The decision of arbitrary court, didn’t execute on free-will ground may by carry into effect forcedly, on the basis of executive leaf, issued by district court. Likewise of no small importance is regulation about the fact that trial in arbitrary court is free of charge.

On the grounds of point 6 article 136 of the Civil-procedural Code of RT, the judge refuses in acceptance of writ in a case, if there is an agreement between sides on transfer of dispute to examination of arbitrary court.

The court may cease the procedure on case, if between sides there is an agreement on transfer of dispute to settlement of arbitrary court – point 7 article 228 of the Civil-procedural Code of RT.

Section 6 of the Civil-procedural Code of RT regulates the issues of executive procedures. According to rules, expounded in given section, the decision of arbitrary courts are liable to execution. According to article 361 of the Civil-procedural Code of RT an executive documents are executive leafs, issued by district court on the grounds of decision of arbitrary courts on disputes between citizens.

Opportunity for transfer of dispute on examination of arbitrary court is stipulated in Economic-procedural Code of the Republic of Tajikistan from 4 November 1995. In article 23 said that “under the agreement of sides an appeared dispute or possible dispute, following out civil legal relations and within the jurisdiction of economic court until the decision-making by may be transferred to arbitrary court”.

Economic court severs case procedure, if there is the decision of arbitrary court entered into validity, adopted upon the dispute between persons, regarding to same subject and reason, with the exception of cases, when economic court refused to issue an executive leaf on forced fulfillment of decision of arbitrary court, restored the case into arbitrary court for new examination, but the procedure of new examination in the same arbitrary court is impossible (point 3 article 85 of the Economic-procedural Code of the Republic of Tajikistan).

According to points 1 and 2 article 87 of the Economic-procedural Code of RT the economic court can disregard the suit without examination, if in execution of arbitrary court there is a case on dispute between same persons, regarding to same subject and reason in the

presence of agreement between persons, participating in case, on transfer of given case for examination of arbitrary court if there is opportunity to go to the arbitrary court and if the defendant, arose an objection against examination of case in economic court, would claim solicitation regarding to dispute's transfer for examination in arbitrary code at the latest his first application in essence of dispute.

Concerning to execution of decisions of arbitrary courts, Economic-procedural Code of RT determines that "forced execution of court act in accordance with the present Code realizing by officer of the economic court on the strength of executive leaf, issued by economic court, adopted this act. Forced execution of the decision of arbitrary courts is also realizing by officers of economic court on the grounds and in accordance with "Regulation on arbitrary courts for settlement of economic disputes in the Republic of Tajikistan". Accounts on forced execution of court act are imposing on debtor, according with the decision of court" (article 198 of the Economic-procedural Code of RT).

"Regulation on arbitrary courts for settlement of economic disputes in the Republic of Tajikistan" is approved by Enactment of Majlisi Oli of the Republic of Tajikistan on 15 May 1997 # 426. Given regulation is employed during transfer of economic disputes for examination in arbitrary court, within the jurisdiction of economic court in accordance with constitutional Law of the Republic of Tajikistan "About economic courts of the Republic of Tajikistan" and Economic-procedural Code of RT, international legal acts, declared by Tajikistan". (Nowadays the constitutional Law of the Republic of Tajikistan "About economic courts of the Republic of Tajikistan" is denied and the constitutional Law "About courts of RT" (from 8 June 2001) is adopted instead of it.

Regulation determines that arbitrary courts may be created in Tajikistan for examination of specific dispute only (ad hoc). Correspondingly, domestic legislation does not recognize arbitrary courts as permanent bodies.

In accordance with article 2 of the Regulation, the arbitrary court is created by sides for examination of concrete dispute. Regulation determines the order of organization, activities and settlement of disputes for arbitrary court. The ground for creation of arbitrary court is an agreement of sides, concluded in written form.

Regulation consists of sections on structure of arbitrary court, arbitration examination, adoption and execution of decision of arbitrary court.

Norms, regulating arbitration settlement of disputes are also stipulated in the Law "On exchanges and stock-exchange trade in the Republic of Tajikistan" from 23 December 1991 and in the Law "On foreign investment in the Republic of Tajikistan" from 10 March 1992. Besides, the Republic of Tajikistan signed "Agreement on order of disputes settlement, concerning to realization of economic activity" from 20 March 1992. The intention of state-participants to grant opportunity to go to the law without difficulties (including courts of arbitration) in the frameworks of CIS is stipulated in it. Recognition and order of execution of valid courts decisions are foreseen in this agreement.

Therefore, reasoning from abovementioned, nowadays the main legal acts, regulating activities of arbitrary court in Tajikistan are Civil-procedural Code of RT, Economic-procedural Code of RT, "Regulation on courts of arbitration" (Appendix #2 to Civil-procedural Code of RT), "Regulation on arbitrary courts for settlement of economic disputes in the Republic of Tajikistan". Actually these documents divide courts of arbitration on two kinds: courts of arbitration for citizens and courts of arbitration for subjects of business undertaking. It's hardly able to find the allusion than in capacity of sides may appear both categories, but, in other hand, the opposite allusion does not exist too.

Article 18 of the Civil-procedural Code of RT says that in cases, provided by law or by international treaties, the dispute appeared from civil legal relations, under the agreement of sides might be transferred for examination in court of arbitration. Actually, the Economic-procedural Code says the same: under the agreement of sides an appeared dispute or possible dispute, following out civil legal relations and within the jurisdiction of economic court until the

decision-making by may be transferred to arbitrary court. Therefore, for transfer of dispute for examination to arbitrary court, the dispute should correspond to following characteristics:

1. appeared from civil legal relations;
2. to be under jurisdiction of economic court or court of general jurisdiction.

In given case legislation does not mention subjective structure of disputes participants, but mentions only about jurisdiction. So, from abovementioned codes it follows that under jurisdiction of courts are only disputes with participation both citizens and juridical persons. Conformably, we can speak about jurisdiction of such disputes in courts of arbitration.

Starting from analysis of present legislation, we may say that the main reason, defining the jurisdiction of dispute to arbitrary court, is its origin out of civil legal relations, with the exception of cases, which cannot be the subject of examination of arbitrary court – labour, family disputes or disputes, where one of the sides is on a territory of foreign state or serve as enterprise, organization with foreign investment.

Accordingly all other disputes, appeared from civil legal relations, that is relative to material or non-property rights of citizens and juridical persons are also might be examined by court of arbitration and present legislation testifies it.

Resume;

Present station of legislation on courts of arbitration in Tajikistan does not provide for active process of their appearance. However, as it was mentioned above, there are a plenty of documents for starting this process. The adoption of law on arbitrary courts might fill the gap in legal regulation of antagonisms.

The chapter is prepared on the basis of report of SouthAgroFund organization.