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Prospects for Western Investment: A Comparison of Joint Venture Laws in the Soviet Union, Yugoslavia, and China

I. INTRODUCTION

The Soviet Union is in a unique position because it is the largest country in the world¹ and has the third greatest population.² This vast population is an untapped market for western firms.³ The Soviet Union's immense territory encompasses one sixth⁴ of the world's land area and is an important source of certain natural resources for western firms.⁵ For example, the Soviet Union contains one third of the earth's forest land.⁶ Although the Soviets do not publish the exact amount of some natural resources, western business sources estimate that the Soviet Union contains the largest natural gas reserves and the second largest coal reserves in the world.⁷ The combination of available natural

¹ *Demographic Patterns*, 76 DOING BUS. WITH E. EUR. USSR I-1, I-3 (Bus. Int'l ed. 1987). The Soviet Union covers 8.6 million square miles which is roughly two and one-half times larger than the United States. *Id.*

² *Id.* The population in 1986 was 279 million which included 120 nationalities speaking 48 languages. The nation is divided into 15 Soviet republics of which the largest and most populous is the Russian Socialist Federative Soviet Republic (RSFSR). The RSFSR contains more than 50 percent of the country's population and encompasses three quarters of the Soviet Union's land. *Id.*

³ *Living Standards*, 76 DOING BUS. WITH E. EUR. USSR I-11, I-12 (Bus. Int'l ed. 1987). Soviet citizens receive free health care, education, and social services. *Id.* at I-11. The government maintains low prices through subsidies of food, vacations, cigarettes, transportation, electricity, and gas. *Id.* at I-12. The immense market for western firms exists in the area of consumer durables, automobiles, clothing, footwear, and certain foods such as chocolate, meat, and vegetables. *Id.*

⁴ *Demographic Patterns*, *supra* note 1, at I-3. Despite the nation's large size, only one third of the land is useful for agricultural purposes. In addition, the Soviet Union's focus on industrial development has resulted in lower levels of investment in agricultural capital and labor. Thus, the Soviet Union is the world's largest producer of some agricultural products such as milk, wheat, potatoes, and sugar, but productivity per acre and per capita is low. The Soviet Union is the second largest producer of cotton and wool, after the United States and Australia respectively. *Natural Resources*, 76 DOING BUS. WITH E. EUR. USSR I-15 (Bus. Int'l ed. 1987).

⁵ *Natural Resources*, *supra* note 4, at I-18.

⁶ *Id.* at I-15. The Soviets also catch the second largest amount of fish in the world. *Id.* at I-16.

⁷ *Id.* The Soviet Union leads the world in production of oil and is second in production of natural gas. *Id.* at I-17. In the area of mineral resources, the Soviet Union is self-sufficient in almost all major industrial minerals. The Soviet Union is not self-sufficient in the production of bauxite, tin, or uranium, but leads the world in the production of iron ore (reserves are estimated at 39 percent of the world's total), pig iron, crude steel, copper, manganese, zinc, nickel, lead, tungsten, titanium, and potash. The Soviets are the world's second largest producer of magnesium, chromium, cobalt, tin, cadmium, and mercury. The Soviet Union is a major producer of gold, silver, and platinum; it is the fourth largest producer of molybdenum. *Id.* at I-18.

resources and an extensive market for the sale of goods makes the Soviet Union an attractive partner for joint ventures⁸ with western firms. In January 1987, as if in recognition of the potential for developing trade with the West, the Soviet Union enacted a decree (Soviet Joint Venture Law) to permit joint ventures with firms from capitalist and developing countries.⁹ The USSR Council of Ministers amended the original joint venture decree (Soviet Joint Venture Law Amendments) in September 1987.¹⁰

There are important reasons why the Soviet Union is seeking to establish joint ventures with western firms at this time. Despite an abundance of raw materials, the Soviet Union will face a serious labor shortage in the next twenty years.¹¹ The growth rate of the Soviet population has decreased since 1960.¹² A diminution of the growth of the labor force will restrain economic growth more severely than in most industrialized countries because the Soviet Union relies more on increases in labor supply than productivity to achieve economic growth.¹³ An important way to deal with this labor shortage is to use technology to increase productivity.¹⁴ Joint ventures are one method to obtain advanced

⁸ There are two types of joint ventures. A contractual joint venture (also called a cooperative or coproduction venture) is one in which the local partner provides land, labor, and other resources, and the foreign partner provides capital and technology. The local partner repays the original principal and a negotiated rate of return on the use of the capital and technology over a predetermined period of time. Profits are distributed according to a formula in the contract, not according to established shares. The capital contributed by either side does not have to be money. An equity joint venture is a limited liability company. The local and foreign partners both invest in the corporation and operate it jointly. Both partners share risks, losses, and profits. Note, *The New Legal Framework for Joint Ventures in China: Guidelines for Investors*, 16 LAW & POL'Y INT'L BUS. 1005, 1007 n.8 (1984) (citing Brehm, *Flex Trade*, CHINA BUS. REV., Sept.-Oct. 1983, at 16, 19-20).

⁹ The decree is entitled *On the Procedure for the Creation and Functioning of Joint Ventures on Soviet Territory with the Participation of Soviet Organizations and Companies from Capitalist and Developing Countries*, Decree of the USSR Council of Ministers, adopted January 13, 1987, No. 49 SP SSSR no. 9, item 40 (1987). The following translation of the law is used throughout this article: *Law on Joint Ventures Passed January 13, 1987*, 73 DOING BUS. WITH E. EUR. USSR app. 10.1 (Bus. Int'l ed. 1987) (unofficial translation) [hereinafter *Soviet Joint Venture Law*]. The law is also translated in *In the USSR Council of Ministers*, 39 CURRENT DIG. SOVIET PRESS No. 6, at 15 (1987).

¹⁰ The amended decree is entitled *On the Establishment in the Territory of the USSR and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries*, 86 DOING BUS. WITH E. EUR. USSR app. 10.1 (Bus. Int'l ed. 1988) (unofficial translation) [hereinafter *Soviet Joint Venture Law Amendments*].

¹¹ *Demographic Patterns*, supra note 1, at I-5-I-6. The Soviet Union's State Committee for Labor and Wages (Goskomtrud) estimates that the national economy has two million vacant jobs and that new investment alone requires 750,000 to 800,000 employees each year. *Id.* at I-7.

¹² *Id.* at I-4. Population growth is occurring more rapidly in the Central Asian and Transcaucasian Republics than in the RSFSR, but the nation's overall population is decreasing. The population growth rate declined from an annual rate of 1.4 percent in the 1960s to approximately 0.9 percent between 1980 and 1983. *Id.* at I-3-I-4.

¹³ *Id.* at I-5; see also *id.* at I-9.

¹⁴ *Id.* at I-9. The Soviet Union is also taking the following steps to address the labor shortage: a campaign against drunkenness and absenteeism; the mechanization of manual jobs; a concentration of new investment in areas such as the Central Asian Republics which have an abundance of labor;

technology.¹⁵ The Central Committee of the Communist Party of the Soviet Union has stated that the task of joint enterprises is to expand the Soviet Union's export base, increase the development of scientific and technical knowledge, and increase the supply of high-quality goods.¹⁶ In addition, joint ventures may produce consumer goods which the government can use to motivate the labor force.¹⁷

Although the Soviet Union has not conducted extensive trade with the West, the Soviet Union has maintained trade ties with countries of the Council for Mutual Economic Assistance (CMEA) for many years.¹⁸ The Soviet Union's joint enterprise law is an effort to develop trade ties further through joint production.¹⁹ Since passage of the Soviet Joint Venture Law, the Soviet Union and CMEA countries have created twenty-nine joint enterprises, including seven enterprises in the Soviet Union.²⁰

Although the creation of joint enterprises with CMEA countries is not unusual, the creation of joint ventures with capitalist countries might seem inconsistent with traditional Marxist-Leninist theory. In particular, joint ventures resemble concessions to foreign commercial interests.²¹ Lenin, however, sought

an increase in the birth rate; and incentives for retirees to work longer. *Id.* at I-5. With regard to the last solution, the Soviet Union's retirement eligibility age is low compared to other countries (age 55 for women and 60 for men). The government increases pensions of retirees who work four additional years beyond the normal age for retirement. *Id.* at I-6.

Labor shortages are most acute in the service and food industries, construction, and transportation. Soviet industry may need to utilize the labor force more productively. For example, a Soviet study revealed that in industry and construction over 50 percent of the employees work without machinery. In agriculture, transportation, and warehousing almost 75 percent of the employees are in a similar position. *Id.* at I-9.

¹⁵ Note, *supra* note 8, at 1007 n.8.

¹⁶ *In the Politburo of the CPSU Central Committee*, 38 CURRENT DIG. SOVIET PRESS No. 52, at 15 (1987). The task of joint enterprises is "to actively use the advantages of the international distribution of labor, expand the Soviet Union's export base, accelerate scientific and technical progress and saturate the market with high-quality goods." *Id.*

¹⁷ *Living Standards*, *supra* note 3, at I-13-I-14. The workforce of the Soviet Union has a high savings rate, in part due to the unavailability of consumer goods. By December 1986, the amount of rubles in savings accounts was equal to 68 percent of total retail sales for the year. These savings accounts represent a source of spending for western firms which market consumer goods. Increasing the availability of consumer goods may reduce savings, increase the value of money wages, and motivate the labor force. *Id.* at I-14.

¹⁸ Scriven, *Co-operation in East-West Trade: The Equity Joint Venture*, 10 INT'L. BUS. L. 105, 110 n.1 (1982). The Soviet Union and other socialist countries established the CMEA (also known as COMECON) to promote economic cooperation. The Soviet Union, Bulgaria, Poland, Hungary, Czechoslovakia, the German Democratic Republic, Cuba, Vietnam, Outer Mongolia, and North Korea are current members of CMEA. *Id.*

¹⁹ Bragin, *So That Everyone Will Benefit*, 39 CURRENT DIG. SOVIET PRESS No. 13, at 15 (1987); see *Soviet Joint Venture Law*, *supra* note 9, at 1. Currently, 424 enterprises and organizations in CMEA countries maintain direct ties with organizations in the Soviet Union. Bragin, *supra* at 15.

²⁰ Bragin, *supra* note 19, at 15.

²¹ L. FISCHER, *THE LIFE OF LENIN* 474 (1964). In 1920, Lenin sought to allow foreign firms to participate in oil, timber, mining, and manufacturing operations in the Soviet Union. In response to

to allow foreign concessions in 1920 to avert a crisis in the Soviet economy.²² Recently, the Soviet Council of Ministers reaffirmed that the creation of joint enterprises with firms from capitalist countries is consistent with Leninism.²³

The new interest in joint ventures may also reflect Soviet recognition that the People's Republic of China has benefitted from joint ventures with capitalist countries.²⁴ China enacted joint venture legislation in 1979 in an effort to reform the economy.²⁵ Since the Chinese enacted joint venture legislation, western firms have established more than 7,000 joint enterprises with China.²⁶ Foreigners have signed contracts with China that equal \$16.7 billion of investment.²⁷ China is a useful model for comparison with the Soviet Union because both nations have centralized, planned economies and a history of anti-capitalist ideology.

opposition to these "concessions" to foreigners, Lenin argued that "[o]ur existence and the hastening of our escape from a critical situation and from hunger is a gigantic force and a revolutionary factor much greater, from the viewpoint of world economy, than the few pennies they will earn from us." *Id.* (quoting Eighth Congress of Soviets, Dec. 21, 1920). In particular, Lenin hoped to develop economic relations with the United States. In 1918, when the government nationalized foreign property in the Soviet Union, Lenin excluded the property of U.S. corporations such as Singer Sewing Machine and International Harvester. Nevertheless, the administration of President Harding, through Secretary of Commerce Herbert C. Hoover, refused to establish commercial relations. *Id.* at 557. Individual entrepreneurs, such as Armand Hammer, did accept Lenin's invitation to participate in concessions. *Id.* at 558.

Lenin described the relationship between foreign concessions and the Soviet government as follows:

The concessionaire is a capitalist. He conducts his business on capitalist lines, for profit. He is willing to enter into an agreement with the proletarian government in order to obtain extra profits, over and above ordinary profits, or in order to obtain raw materials which he cannot otherwise obtain, or can obtain only with great difficulty. Soviet power gains by the development of the productive forces, by securing an increased quantity of goods immediately, or within a very short period. We have, say, a hundred concerns, mines and forest territories. We cannot develop all of these—we lack the machines, food, and transport By "implanting" state capitalism in the form of concessions, the Soviet government strengthens large-scale production as against petty production, advanced production as against backward production, machine production as against hand production.

The Tax in Kind (June 1921): The Significance of the New Policy and Its Conditions, in LENIN, ON POLITICS AND REVOLUTION: SELECTED WRITINGS 337 (James E. Connor ed. 1968).

²² L. FISCHER, *supra* note 21, at 474.

²³ Bragin, *supra* note 19, at 15. An account of a press conference with V. M. Kamentsev, the Vice-Chairman of the Soviet Council of Ministers, explained the consistency of joint enterprises with capitalist countries and Leninism as follows:

V. I. Lenin continually stressed the need to utilize advanced foreign experience in the development of our state. But there is also a difference. This is not the 1920s, when the state was suffering the grave results of economic collapse. So it is not necessary to turn over certain sectors of the economy to total foreign management. Today we want to and can cooperate as equals. And it is within the framework of joint enterprises that we envision this cooperation.

Id.

²⁴ See Popov, *Travel Notes: Two Weeks in China*, 39 CURRENT DIG. SOVIET PRESS No. 29, at 16 (1987). During this trip V. Popov, the Vice-Chairman of the USSR State Committee for Television and Radio, noted that China's attraction of foreign capital, technology, and scientific knowledge had created rapid economic development. *Id.* at 17.

²⁵ See *infra* notes 204-07 and accompanying text.

²⁶ See *infra* note 211 and accompanying text.

²⁷ See *infra* notes 214-16 and accompanying text.

China is also a useful model for comparison because China relied on the experience of several nations, including Yugoslavia, in drafting joint venture legislation.²⁸ In 1967, Yugoslavia was the first socialist nation to enact joint venture legislation.²⁹ Yugoslavia has amended the law several times since 1967 to create conditions conducive to western investment.³⁰ The Yugoslav legislation provides an unusual source for comparison with the Soviet law because Yugoslavia has a decentralized economy and two decades of experience with joint ventures.

This Comment focuses on the application of the Soviet Joint Venture Law to firms from developed capitalist countries, comparing the Soviet law with the joint venture laws of Yugoslavia and the People's Republic of China.³¹ Part II of the Comment discusses the history of joint ventures in the Soviet Union and examines selected areas of the current law governing Soviet joint ventures.³² Part III examines joint venture legislation in Yugoslavia.³³ Part IV analyzes the joint venture law of the People's Republic of China.³⁴

The Comment compares the laws of the three nations in Part V. The issues include topics such as who may participate in joint ventures, how the laws protect foreign investors, how the general economic setup of the country aids or impedes joint ventures, and to what extent countries adapt themselves to promote joint ventures.³⁵ The goal in this section is to determine whether the Soviet law is modeled on the Chinese or Yugoslav law, or if the Soviets have forged a new direction in the creation of joint enterprises. The analysis shows that the Soviet Union has made some changes in the law, and has exhibited flexibility in individual negotiations, in order to attract western capital. The article observes that there is competition among these socialist nations for western capital. Part VI, the conclusion, discusses the prospects for joint ventures in the Soviet Union.

II. THE SOVIET UNION

A. *Historical Development of Joint Venture Legislation in the Soviet Union*

In 1930, the Soviet government prohibited joint ventures in the Soviet Union with either western firms or East European investors.³⁶ The Soviets decided that

²⁸ See *infra* note 209 and accompanying text.

²⁹ See *infra* notes 114-15 and accompanying text.

³⁰ See *infra* notes 123-32 and accompanying text.

³¹ See *infra* notes 304-13 and accompanying text.

³² See *infra* notes 36-113 and accompanying text.

³³ See *infra* notes 114-97 and accompanying text.

³⁴ See *infra* notes 198-303 and accompanying text.

³⁵ See *infra* notes 304-431 and accompanying text.

³⁶ Pedersen, *Joint Ventures in the Soviet Union: A Legal and Economic Perspective*, 16 HARV. INT'L L.J. 390 (1975). See G. SMITH, SOVIET FOREIGN TRADE: ORGANIZATION, OPERATIONS AND POLICY, 1918-

it was ideologically impermissible to have foreigners control any area of the Soviet Union.³⁷ Since the 1930 decision, the Soviet Union has limited foreign direct investment to industrial cooperation agreements (ICAs).³⁸ ICAs differ from joint ventures, however, because the non-Soviet partner in the ICA does not participate in management, or share in the profits and equity of the enterprise.³⁹ Scholars argue that the Soviet Union permitted ICAs because the non-Soviet party was not involved in internal legal and institutional aspects of the economy.⁴⁰ ICAs between western firms and the Soviet Union included deals with Fiat, Occidental Petroleum, and PepsiCo.⁴¹

In 1973, the Soviet Union expressed interest in long-term economic cooperation with capitalist countries,⁴² but did not act on this interest. The Soviets also alluded to an arrangement in which the Soviet Union would participate in more complex cooperative arrangements with western firms.⁴³ For example, a Soviet study encouraged Soviet enterprises to participate in joint manufacturing and research projects with firms from capitalist countries.⁴⁴

In 1983, the Soviet Union approved joint ventures with members of the CMEA, but not with firms from capitalist countries.⁴⁵ In January 1986, the

1971 at 60-63 (1973), and J. QUIGLEY, *THE SOVIET FOREIGN TRADE MONOPOLY* 35, 47-48 (1974) for a discussion of Soviet joint venture activity from 1920 to 1930.

³⁷ G. SMITH, *supra* note 36, at 60.

³⁸ Recent Developments, *Foreign Investment: New Soviet Joint Venture Law*, 28 HARVARD INT'L L.J. 473 (1987). See *infra* note 41.

The industrial cooperation agreement (ICA) is an arrangement in which a western company invests technology, capital, and equipment in the Soviet Union. The western firm may also build a plant in the Soviet Union or contribute knowledge and credit. The Soviet Union reimburses the western firm through payment in natural resources or the plant's products. ICAs exist in four forms: (1) coproduction and specialization agreements in which both parties produce parts of a product which one party assembles; (2) subcontracting arrangements in which the Soviet party manufactures and delivers goods to the western partner based on the latter's specifications; (3) licensing agreements in which the western party licenses technology to the Soviet party and the Soviets pay for the technology with products; and (4) turnkey plant agreements in which the Soviet partner purchases plant, equipment, and technology from the western party, paying with the plant's products. Pedersen, *supra* note 36, at 391-92.

³⁹ Recent Developments, *supra* note 38, at 473.

⁴⁰ See, e.g., *id.* at 473-74.

⁴¹ For a summary of the major industrial cooperation agreements, see Fitzpatrick, *Soviet-American Trade, 1972-1974: A Summary*, 15 VA. J. INT'L L. 39, 44-55 (1974); see also Pedersen, *supra* note 36 at 392-93; N.Y. Times, Jan. 18, 1987, § 3, at 4, col. 4.

⁴² *Prospects for Soviet-American Trade*, 25 CURRENT DIG. SOVIET PRESS No. 19, at 7 (1973).

⁴³ C. McMILLAN AND D. ST. CHARLES, *JOINT VENTURES IN EASTERN EUROPE: A THREE-COUNTRY COMPARISON* 13 (1973). In 1973, the Soviet Union stated that the economic relations between the Soviet Union and western countries were changing from "sporadic commercial deals to a planned and programmed economic cooperation on a stable and long-term basis." *Id.* at 14 (quoting D. M. Gvishiani, deputy chairman of the Soviet State Committee for Science and Technology).

⁴⁴ *Id.* at 14. The Institute of World Economy and International Relations prepared the study for Gosplan. *Id.*

⁴⁵ *Edict on the Procedures for Effectuating Activity on the Territory of the USSR of Joint Economic Organizations*

Soviet Union indicated a willingness to engage in joint ventures with firms from capitalist countries.⁴⁶ In addition, the Soviet Union issued a general statement on the joint venture concept in September of the same year.⁴⁷ The Soviet Council of Ministers passed a decree on January 13, 1987 establishing procedures for the creation and operation of Soviet joint ventures.⁴⁸ Firms in countries such as the Federal Republic of Germany, the United States, Japan,⁴⁹ India,⁵⁰ and Austria⁵¹ have submitted over 200 proposals for joint ventures. The number of joint ventures the Soviet Union has enacted, however, is relatively small.⁵²

of the USSR and other COMECON Countries, VED. VERKH. SOV. SSSR no. 22, item 330 (1983), reprinted in W. BUTLER, BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM 263 (1983).

⁴⁶ *Policy toward Joint Ventures*, 73 DOING BUS. WITH E. EUR. USSR X-3 (Bus. Int'l ed. 1987).

⁴⁷ *Id.* The statement read as follows:

It was recognized as necessary to also develop new forms of cooperation with firms from capitalist countries, such as scientific-technical and production cooperation and joint enterprises.

From the Soviet side, enterprises and trusts will enter into this cooperation. Those that have the right of access to the foreign market may themselves carry out work on cooperation. The remainder will do this with the help of foreign trade trusts.

As a rule, cooperation must be carried out on a balanced basis (according to the foreign currency cost of mutual deliveries) during the period of operation of the agreement.

Joint enterprises will be created on the basis of common capital, whereby the share of the foreign participant may not exceed 49%. Sufficiently privileged conditions of participation will be created for foreign partners: privileges may be reflected in the level of taxation, in the right to freely transfer profits and other assets belonging to him, in the right to a sufficiently weighty participation in the management of the enterprise and control over the quality of production. Foreign participants may also use their profit for reinvestment.

State organs of the Soviet Union will not set targets for joint enterprises.

Id. (quoting Soviet statement from 1986 UNCTAD session).

⁴⁸ See *Soviet Joint Venture Law*, *supra* note 9, at 1. The law comprises seven sections: an untitled introduction that discusses general principles; Participants, Property and Rights of Joint Ventures; Procedure for Joint-Venture Activity; Taxation of Joint Ventures; Supervision (Control) of the Activity of the Joint Ventures; Staff of Joint Ventures; and Liquidation of Joint Ventures. *Id.*

⁴⁹ Bragin, *supra* note 19, at 15; see also *Soviet Union: New Joint Ventures Planned by Occidental, Combustion Engineering in Chemicals Sector*, 5 INT'L TRADE REP. 866 (June 8, 1988).

⁵⁰ *Soviet-Indian Talks*, 39 CURRENT DIG. SOVIET PRESS No. 27, at 15 (1987).

⁵¹ *Talks in Vienna*, 39 CURRENT DIG. SOVIET PRESS No. 27, at 15-16 (1987). For example, the Soviet Union and Austria have held talks to develop the following joint production projects: construction in the Soviet Union of additional facilities to produce wire rope and brass-plated wire for armored high-pressure hose; extension to the year 2008 of agreements to deliver Soviet natural gas to Austria; and construction in Austria of ten ice-class lumber ships with a capacity of 2,000 tons each. The two countries also discussed the need for investment protection agreements. *Id.*

⁵² *Soviet Joint Ventures: The Problems Thus Far*, BUS. E. EUR. 81 (Bus. Int'l ed. March 14, 1988). According to western business sources, the Soviet Union had signed joint venture agreements with 23 foreign partners as of February 28, 1988. These agreements included two joint ventures with Hungarian partners, one agreement with an Indian partner, and twenty agreements with western partners. *Id.* In May 1988, the Soviets signed the first joint venture agreement with a Canadian firm and agreed to the first U.S.-Soviet joint publishing venture. See *Soviet Union: McDonald's Hamburgers Coming to Soviets Under Agreement with Moscow City Council*, 5 INT'L TRADE REP. 672 (May 4, 1988) and *Soviet Union: First U.S.-Soviet Joint Publishing Venture Announced, Will Produce Computer Magazine*, 5 INT'L TRADE REP. 671 (May 4, 1988).

B. *Current Law Governing Joint Ventures in the Soviet Union*

1. Government Policy and General Principles

The purpose of the Soviet Union's Joint Venture Law is to increase trade and enhance scientific, economic, and technical cooperation with the capitalist and developing countries on a mutually advantageous basis.⁵³ Cooperation with western nations reflects the recent policy of *glasnost*, or openness, which is part of a larger attitude of acceptance towards business initiative and enterprise.⁵⁴ The Soviets apparently hope that joint ventures on Soviet soil will integrate the nation into the international economic community.⁵⁵

The Soviet law states that the Soviet partners in the joint enterprise should pursue objectives of meeting the nation's need for certain types of industrial output, raw materials, and food products.⁵⁶ The law encourages Soviet participants to engage in joint enterprises which bring advanced foreign equipment, technology, material, and financial resources to the Soviet Union, secure managerial experience to the USSR, develop the nation's export base, and reduce unnecessary imports.⁵⁷ The Soviets reason that joint ventures will diversify their exports and help increase their reserves of hard currency.⁵⁸

2. Registration and Operation

Under the law, the Soviet organization interested in creating a joint venture submits a proposal with technical and economic substantiation and a draft article of incorporation to the ministries and departments under which they operate.⁵⁹ A ministry or department of a republic submits the same material for approval

⁵³ *Soviet Joint Venture Law*, *supra* note 9, at 1.

⁵⁴ Recent Developments, *supra* note 38, at 478. The Soviet Union has granted trading rights to additional ministries and enterprises in order to permit more entities to purchase goods from joint ventures and supply them with materials. Prior to this change, trading rights were reserved to Foreign Trade Organizations (FTOs). *Id.* (citing *Soviets Getting Serious About Joint Ventures*, BUS. E. EUR. 289 (Bus. Int'l ed. Sept. 15, 1986)).

⁵⁵ Recent Developments, *supra* note 38, at 478. The Soviet Union has petitioned to join the International Monetary Fund, the World Bank, and the General Agreement on Tariffs and Trade in the hope that membership will increase trade with western markets. *Id.* (citing *Gorbachev's Prairie Pals*, NEWSWEEK Apr. 6, 1987, at 31).

⁵⁶ *Soviet Joint Venture Law*, *supra* note 9, at 1.

⁵⁷ *Id.*

⁵⁸ Recent Developments, *supra* note 38, at 479 (citing *Joint Ventures—What They Will Be Like*, NEW TIMES Dec. 22, 1986, at 15 (Eng. ed.)). The need for hard currency is primarily a result of the decline in oil prices in the early 1980s. Since oil and gas are the major Soviet exports to hard currency countries, the decline in the price of these commodities contributed to a hard-currency deficit. The Soviet Union's deficit increased when the dollar depreciated in value because oil and gas exports were valued in dollars, while European currencies were used to value Soviet imports. As a result, the Soviets decreased the amount of high technology imports in 1986. Recent Developments, *supra* note 38, at 478.

⁵⁹ *Soviet Joint Venture Law*, *supra* note 9, at 1.

to the Council of Ministers of the corresponding republic,⁶⁰ to Gosplan, the central state planning committee, and to the Ministry of Finance.⁶¹ In the original decree, the Soviet Council of Ministers also approved all joint ventures.⁶² The Soviets removed this requirement in September 1987; under the amended decree, ministries and departments of the USSR and the republics' Council of Ministers may approve joint ventures.⁶³ The Soviet law does not provide for a time period within which the proposals are returned to the Soviet or foreign partners. The joint venture law allows the parties to determine the length of the joint venture in the enterprise's formation documents.⁶⁴

A problem concerning registration and operation of the Soviet Joint Venture Law involves pressures on western firms to sign joint letters of intent to form a joint venture.⁶⁵ Both western competitors and Soviet officials are sources of pressure on firms to sign letters of intent.⁶⁶ The purpose of the letter of intent is to isolate preliminary problems that need resolution before the parties can engage in substantive discussions.⁶⁷ Western firms, however, claim that the current joint venture law contains many unresolved issues which are a source of potential misunderstanding.⁶⁸ Some firms which have dealt with the Soviets for many years will exchange letters regarding a joint venture, but consider it unwise to sign a letter of intent merely for the sake of protocol.⁶⁹ These firms argue that when a firm signs a letter of intent, the Soviets expect the firm to make a serious effort to pursue the stated intent.⁷⁰ One manager advises against

⁶⁰ *Id.* The Soviet Union is a federation; each of the fifteen republics has a constitution and administrative structure similar to the Soviet federal apparatus. *Government Structure*, 58 DOING BUS. WITH E. EUR. II-1, 3 (Bus. Int'l ed. 1985).

⁶¹ *Soviet Joint Venture Law*, *supra* note 9, at 1.

⁶² *Id.*

⁶³ *Soviet Joint Venture Law Amendments*, *supra* note 10, at 1-2.

⁶⁴ *Soviet Joint Venture Law*, *supra* note 9, at 2.

⁶⁵ *First Step in an EE JV: A Letter of Intent?*, BUS. E. EUR. 113 (Bus. Int'l ed. April 13, 1987) [hereinafter *First Step in JV*]. A joint letter of intent is an agreement to discuss formation of a joint venture. The Soviet Union claimed that by April 1987, the government had received 200 letters of intent and identified 39 projects for serious consideration. *Id.*

⁶⁶ *Id.* Western competitors pressure a firm when the competitors are willing to make a commitment to develop a joint venture during preliminary discussions with the Soviets. Some firms claim that the Soviets have hinted that refusal to sign a letter of intent will influence the firm's sale of goods to the USSR. *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 114. For example, under the Soviet law the relationship between the joint venture and the Soviet Union's annual plan is not discussed. The law does not specify how the Soviet Union will guarantee access to markets or supplies of materials, how the Soviet Union will establish costs of materials and prices of goods, and how much inputs and supplies will cost. Some western business managers attribute this potential for misunderstanding not only to the vagueness in the Soviet law, but also to the Soviet's lack of understanding about western business terms. *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

placing a time limit on the negotiations to resolve issues in the letter because failure to reach agreement may hurt the firm's future sales to the Soviets.⁷¹

3. Participants, Property, and Rights

a. *Participants*

The Soviet Joint Venture Law states that the participants in joint enterprises may be one or several Soviet associations that are legal entities, and one or more foreign firms that are legal entities, so long as the Soviet side provides at least 51 percent of the initial capitalization.⁷² Since joint enterprises are legal entities under Soviet law, they can participate in traditional activities of a joint venture.⁷³ According to the Soviet law, joint enterprises are financially independent and fully responsible for their own profits, losses, financing, and capitalization. All joint enterprises must have a charter of incorporation, and the participants must approve that charter.⁷⁴

b. *Property*

The shareholders of a Soviet joint venture contribute the initial capitalization and can add to this base from profits or additional investment.⁷⁵ The initial contribution can include cash or in kind contributions.⁷⁶ In the original decree, the parties had assessed ruble contributions based on agreed prices that reflected world market prices; the parties valued the foreign partner's investment in the same manner, but they converted the value of the investment into rubles based on the official exchange rate established by Gosbank of the Soviet Union.⁷⁷ The Soviets amended this provision in September 1987 and now permit the

⁷¹ *Id.* A prophylactic measure to protect sales is to include a clause in the letter of intent which states that the agreement has no commercial consequences. This clause may make the letter of intent nonbinding on both sides. *Id.*

⁷² *Soviet Joint Venture Law*, *supra* note 9, at 1-2. Soviet joint enterprises become legal entities after creation of a charter and registration with the Soviet Union's Ministry of Finance. A notice is published in the press at that time. *Id.* The Soviet Union has indicated that it may enact legislation to eliminate the current limitation of 49 percent foreign ownership. *N.Y. Times*, Oct. 28, 1988, § 1, at 1.

⁷³ *Id.* at 2. Under Soviet law, joint enterprises can, on their own behalf, "conclude contracts, acquire property and personal nonproperty rights, be made liable and be plaintiffs and defendants in court and in arbitration." *Id.*

⁷⁴ *Id.* In the charter the participants must agree upon the following issues: the duration of the joint venture; the objectives and aims of the joint venture; location; participants; amount of initial capitalization; size of each participant's shares; the procedure for initial capitalization; the structure, composition, and competence of the management body; the decisionmaking apparatus; and the procedure to liquidate the enterprise. *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* The rate used is the one in effect on the day the parties sign the contract or another day which the participants choose. *Id.*

joint venture participants to assess the foreign contribution in rubles or in the foreign currency.⁷⁸

A foreign participant who brings property into the Soviet Union does not pay customs duty.⁷⁹ The joint enterprise must insure its property through Soviet insurance agencies.⁸⁰ The law allows for depreciation of property and construction of facilities in accordance with procedures established for Soviet organizations.⁸¹

The Soviet Union protects the property rights of a joint enterprise in accordance with the Soviet law applicable to Soviet state organizations. Soviet law permits only certain state agencies to review complaints regarding joint ventures, and only those agencies may assess claims against the joint enterprise. The Soviet Union cannot, however, requisition or confiscate the joint venture's property, and the joint enterprise can utilize and dispose of the property in accordance with its aims.⁸²

The Soviet Council of Ministers' State Foreign Economic Relations Commission must grant permission for participants in the joint enterprise to transfer their shares in the joint venture. The law states that both parties must agree when there is a transfer of shares to a third party. Preference in acquisition is given to the Soviet shareholders.⁸³

c. *Rights*

The joint venture law confers a variety of rights on western firms. Under the Soviet Joint Venture Law, if the joint venture is reorganized, rights and duties are transferable to the successors. Rights to industrial property and patents are protected in accordance with Soviet law. The Soviet law, however, gives the participants the latitude to determine the procedure for transfer of industrial property rights between the joint enterprise and its participants, or vice versa. The procedure for commercial use and protection of the rights abroad are defined in the enterprise's documents.⁸⁴

The joint venture law makes clear that a joint enterprise is liable for its debts to the extent of the value of its property, but is not liable for other debts of the Soviet state.⁸⁵ Similarly, the Soviet Union is not responsible for obligations of the joint enterprise. Joint enterprises, both in and outside the Soviet Union,

⁷⁸ *Soviet Joint Venture Law Amendments*, *supra* note 10, at 3.

⁷⁹ *Soviet Joint Venture Law*, *supra* note 9, at 2.

⁸⁰ *Id.* at 3.

⁸¹ *Id.* at 5.

⁸² *Id.* at 3.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* Under the Soviet law, the joint venture is liable for the debts of its subsidiaries. The subsidiaries, however, are not liable for the debts of the joint venture. *Id.*

can open branch offices in accordance with the law.⁸⁶ All disputes between the joint enterprise and the Soviet Union, or disputes between participants in a joint enterprise, are subject to the jurisdiction of Soviet courts, or, if both sides agree, to an arbitration court.⁸⁷

In addition to the rights discussed above, the Soviet law protects a foreigner's rights in the event of a liquidation of a joint venture. Liquidation of a Soviet joint enterprise may occur as a result of procedures set forth in the articles of incorporation, or by the Soviet Council of Ministers if the enterprise does not follow the objectives and tasks of the articles of incorporation. The foreign partner is able to regain the remaining value of its investment at the time of liquidation after satisfying obligations to the Soviet partners and other third parties.⁸⁸

4. Management and Labor

In accordance with the Soviet law, participants of a joint enterprise appoint a board to govern the enterprise.⁸⁹ The chairman of the board and general director of the joint enterprise must be Soviet citizens.⁹⁰ The joint venture law is ambiguous on the question of whether the western partner will be permitted to select or remove Soviet managers.⁹¹ Although the Soviets are taking steps to deal with ineffective managers in state-owned enterprises by allowing unprofitable enterprises to go bankrupt,⁹² it is unclear whether the Soviets will tolerate ineffective managers in joint enterprises.

Joint venture partners also have obligations to the employees of the enterprise. The Soviet law provides that the enterprise primarily must employ Soviet citizens.⁹³ The law requires the management of a joint enterprise to sign collective agreements with the trade union in the enterprise and provide for the social development of the workers in accordance with Soviet law and the formation documents. Working conditions which apply to Soviet citizens are also applicable to foreign employees except those regarding compensation, pension

⁸⁶ *Id.* The law also permits joint ventures set up with Soviet enterprises in other countries to establish subsidiaries in the Soviet Union. *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 7. The Soviets publish notices in the press about the liquidations of joint ventures. *Id.*

⁸⁹ *Id.* at 3.

⁹⁰ *Id.* at 4.

⁹¹ *First Step in JV*, *supra* note 65, at 114. The law simply states that "[m]anagement of current activities is carried out by the management, consisting of Soviet and foreign citizens." *Soviet Joint Venture Law*, *supra* note 9, at 4.

⁹² See *First Soviet Bankruptcy: Reforms Reach Bottom Line*, BUS. E. EUR. 115 (Bus. Int'l ed. April 13, 1987) [hereinafter *First Soviet Bankruptcy*]. According to Business International, there is no evidence that bankruptcy will impede a joint venture partner or subsupplier to such an extent that western firms should avoid joint ventures in the Soviet Union. *Id.*

⁹³ *Soviet Joint Venture Law*, *supra* note 9, at 7.

benefits, and leave rights.⁹⁴ The joint enterprise is required to contribute to the social insurance of Soviet and foreign employees and to the pensions of Soviet employees through payments to the Soviet state budget.⁹⁵ Foreign workers pay income tax to the Soviet Union and are permitted to transfer their unused salary abroad in hard currency.⁹⁶

5. Conduct of Economic Activity

The Soviet law regulates the conduct of the joint venture's economic activity in three areas. These areas include the procurement of supplies and the distribution of profits of the joint venture. The law also regulates the taxation of the joint enterprise.

a. *Supplies*

Under the Soviet law, joint enterprises can act autonomously to obtain supplies. The shipment of freight occurs in accordance with procedures established for Soviet organizations.⁹⁷ State planning organizations such as Gosplan, however, cannot impose plans on joint ventures or guarantee the sale of the joint venture's products.⁹⁸ The law also gives the joint venture the right to import and export to western or CMEA markets independently, through Soviet foreign trade organizations, or through the foreign partner's distribution network. Under the original decree, the joint enterprise had purchased supplies and raw materials on the Soviet domestic market in ruble payments to a Soviet foreign trade organization.⁹⁹ The amended decree enables the Soviet organization and the joint venture enterprise to determine the type of currency used for the purchase of goods from, or the sale of goods to, the domestic market.¹⁰⁰

b. *Profits*

The Soviet law provides joint enterprises with access to credit, in both foreign currency and rubles, and provides for interest payments on sums retained in

⁹⁴ *Id.* Foreign citizens determine compensation, pension benefits, and leave rights through individual agreements with the joint enterprise. The Soviets credit pension payments to foreign workers in the hard currency of their country. *Id.*

⁹⁵ *Id.* The State Committee for Labor and Social Problems of the USSR and the All-Union Central Council of Trade Unions have authority to interpret Soviet law regarding social insurance for foreign citizens. *Id.*

⁹⁶ *Id.* Rules governing the taxation of foreign workers are set forth in *On the Income Tax from Foreign Juridical and Natural Persons*, decree of the Presidium of the Supreme Soviet of the USSR of May 12, 1978. *Id.*

⁹⁷ *Id.* at 5.

⁹⁸ *Id.* at 4.

⁹⁹ *Id.*

¹⁰⁰ *Soviet Joint Venture Law Amendments*, *supra* note 10, at 5.

Soviet banks.¹⁰¹ A joint enterprise must establish several funds, including a reserve fund equal to 25 percent of the initial capitalization, raised through annual deductions from profits for enterprise activities and "the social development of the collective."¹⁰² After deductions for the funds and a contribution to the state budget, remaining profits are distributed on the basis of shareholder equity. The law does guarantee foreign shareholders the right to transfer abroad all their share of the profits in foreign currency, but such transfers are subject to limitations.¹⁰³

c. Taxation

The joint venture law requires joint enterprises to pay a 30 percent tax on profits which remain after deductions for the reserve fund and other funds for production development, science, and technology. The original decree had provided for a tax exemption for the first two years of operation from the date of registration.¹⁰⁴ The amended decree exempts the joint venture from paying taxes on profits for two years from "the moment of the receipt of profit."¹⁰⁵ Procedures exist in the law to verify tax calculations and appeal unfavorable decisions.¹⁰⁶ The foreign partner must pay an additional 20 percent tax on profits transferred abroad unless there is an agreement between the Soviet Union and the foreign state permitting untaxed profit transfers.¹⁰⁷

6. Summary

It is difficult to assess the reaction of western firms to the Soviet law because the Soviets have signed only a small number of joint venture contracts so far.¹⁰⁸ An examination of two joint venture agreements that the Soviets signed with Finnish and Japanese firms may give some indication of how the law is functioning.¹⁰⁹ Negotiations for the Finnish joint venture agreement lasted approximately one year, and both sides made concessions in order to reach a final

¹⁰¹ *Soviet Joint Venture Law*, *supra* note 9, at 4. The Foreign Trade Bank (Vneshtorgbank) handles foreign currency, and the Soviet State Bank (Gosbank) deals with ruble transactions. *Id.*

¹⁰² *Id.* at 5.

¹⁰³ *Id.* at 4, 5. The Soviet law regarding profit repatriation is based on a zero balance concept. This provision only permits the foreign partner to repatriate an amount of profit equal to the surplus of hard currency earned from exports and imports. *Experience of Western Companies*, 73 *DOING BUS. WITH E. EUR.* USSR X-6, 6a (Bus. Int'l ed. 1987).

¹⁰⁴ *Soviet Joint Venture Law*, *supra* note 9, at 5.

¹⁰⁵ *Soviet Joint Venture Law Amendments*, *supra* note 10, at 6.

¹⁰⁶ *Soviet Joint Venture Law*, *supra* note 9, at 6.

¹⁰⁷ *Id.*

¹⁰⁸ *See infra* note 52.

¹⁰⁹ *Finns or Japanese? First Soviet JV Signed*, *BUS. E. EUR.* 201-02 (Bus. Int'l ed. June 29, 1987) [hereinafter *Finns or Japanese?*]. The Finnish firm will manufacture wood impregnates for use in construction projects. The Japanese firm will operate a plant to process timber into wood. *Id.*

agreement.¹¹⁰ Although the agreement allows the Finnish firm to repatriate profits in convertible currency, these profits must derive from export sales.¹¹¹ The Finnish firm, however, has a strong record of sales in the Soviet Union; thus, the joint venture will focus on producing goods that will reduce the importation of similar products, a practice known as import substitution.¹¹² In contrast to the Finnish joint venture, the Japanese firm will manufacture products to export to Japan.¹¹³ Both joint venture agreements demonstrate that the Soviets are willing to accommodate diverse goals.

III. YUGOSLAVIA

When it enacted joint venture legislation in 1967,¹¹⁴ Yugoslavia was the first socialist nation to adopt legislation to generate foreign exchange, provide a source of investment for domestic purposes, and increase exports to western countries.¹¹⁵ The 1967 law, later amended, also provided an opportunity to stimulate the growth of technology and develop in Yugoslavia the managerial and marketing skills necessary for competition in the world economy.¹¹⁶

A. *Historical Development of Joint Venture Legislation in Yugoslavia*

The primary purpose of the 1967 legislation was to protect the Yugoslav partner in the joint venture against the foreign partner.¹¹⁷ The law provided that the foreign partner was permitted to obtain only a minority interest in the joint venture.¹¹⁸ The law limited foreign investment to a contractual joint venture.¹¹⁹ Under the Yugoslav system of worker self-management, the foreign partner did not obtain property rights or ownership in the Yugoslav organization because the foreign firm invested only in the Yugoslav partner.¹²⁰ As a

¹¹⁰ *Id.* at 201-02.

¹¹¹ *Id.* at 202; see *Soviet Joint Venture Law*, *supra* note 9, at 4, 5.

¹¹² *Firms or Japanese?*, *supra* note 109, at 202.

¹¹³ *Id.*

¹¹⁴ *Law Amending and Supplementing the Law on the Funds of the Business Organizations*, adopted by the Yugoslav Parliament, July 10-11, 1967, reprinted and translated in 1 AM. REV. E.-W. TRADE 43 (1968) [hereinafter *1967 Yugoslav Law*]. Yugoslavia was the first Eastern European country to enact joint venture legislation. Buzescu, *Joint Ventures in Eastern Europe*, 32 AM. J. COMP. L. 407, 408 (1984).

¹¹⁵ See *1967 Yugoslav Law*, *supra* note 114, at art. 64K. See also Artisien & Buckley, *Western Investment and the New Law in Yugoslavia*, 19 J. WORLD TRADE L. 522 (1985).

¹¹⁶ *1967 Yugoslav Law*, *supra* note 114, at art. 64K.

¹¹⁷ Artisien & Buckley, *supra* note 115, at 523. Yugoslavia recognized that the foreign partner usually had more economic and financial power than the Yugoslav enterprise. *Id.*

¹¹⁸ *1967 Yugoslav Law*, *supra* note 114, at art. 64I.

¹¹⁹ *Id.* at art. 63. A contractual joint venture represents an intermediate form of investment which does not exert as much influence over economic decisionmaking as a wholly foreign-owned subsidiary, but which provides a stronger incentive for foreign firms to provide technology than a licensing agreement. Artisien & Buckley, *supra* note 115, at 523; see also *supra* note 8.

¹²⁰ Artisien & Buckley, *supra* note 115, at 523.

result, the Yugoslav government treated the foreign partner's investments as deposits of guest capital.¹²¹ This practice ensured that the partners of the joint venture were able to exercise rights through a business board, and simultaneously Yugoslav workers were able to pursue self-management through legal mechanisms.¹²²

In 1978, after the initiation of a large number of joint ventures, Yugoslavia amended the law.¹²³ The new 1978 law contained institutional and legal deterrents to foreign investment.¹²⁴ The institutional deterrents were conflicts between the goals of foreign partners and the goals of Yugoslav firms operating under policies of self-management.¹²⁵ For example, the export clause was a source of conflict between the joint venture partners.¹²⁶ The legal deterrents included restrictions on profits, capital transfers, and conversion of the Yugoslav dinar.¹²⁷ Western businesses reacted negatively to the changes, which resulted in a substantial decrease in the number of joint ventures between 1978 and 1984.¹²⁸ The Yugoslav Federal Assembly amended the law again in 1984 (Yugoslav Joint Venture Law),¹²⁹ and western businesses reacted positively to the new amendments.¹³⁰ These amendments sought to increase foreign investment, simplify the approval procedure,¹³¹ eliminate profit ceilings and restrictions on profits, and guarantee return of the foreign partner's investment.¹³²

¹²¹ *Id.*

¹²² *Id.* (citing Scriven, *Yugoslavia's New Foreign Investment Law*, 13 J. WORLD TRADE L. 96 (1979)).

¹²³ *Government Policy and Legal Framework*, 74 DOING BUS. WITH E. EUR. YUGOSLAVIA X-3 (Bus. Int'l ed. 1987) [hereinafter *Government Policy—Yugoslavia*]. See *Law On Investment of Resources of Foreign Persons In Domestic (Yugoslav) Organizations of Associated Labor*, 18 INT'L LEGAL MATERIALS 230 (1979) [hereinafter *1978 Yugoslav Law*].

¹²⁴ Artisien & Buckley, *supra* note 115, at 524.

¹²⁵ *Id.*

¹²⁶ *1978 Yugoslav Law*, *supra* note 123, at art. 24. The export clause required the foreign investor to re-export goods produced in Yugoslavia in order to earn foreign exchange. The foreign partner, however, sought to protect its existing markets in other countries by limiting exports from the joint venture to them. Artisien & Buckley, *supra* note 115, at 524.

¹²⁷ See *1978 Yugoslav Law*, *supra* note 123, at arts. 17, 19, 20, 23. The Yugoslav dinar is a nonconvertible currency. Artisien & Buckley, *supra* note 115, at 524.

¹²⁸ *Government Policy—Yugoslavia*, *supra* note 123, at X-3.

¹²⁹ The 1984 legislation is called *The Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor* (revised text) adopted by the Yugoslav Federal Assembly, November 1984, promulgated February 1985, reprinted and translated in 52 DOING BUS. WITH E. EUR. YUGOSLAVIA app. 10.1 (Bus. Int'l ed. 1987) [hereinafter *Yugoslav Joint Venture Law*]. Yugoslavia originally published the law in *Shuzbeni List*, OFFICIAL GAZETTE no. 5, Feb. 8, 1985. The law comprises sixty-one articles within the following seven sections: Basic Provisions; The Joint Business Board; The Rights and Obligations of Contracting Parties Stemming from Invested Resources, and Income Sharing; Approval and Registration of Joint Venture Contracts; Settlement of Dispute; Punitive Provisions; and Concluding Provisions. See *Yugoslav Joint Venture Law*, *supra*.

¹³⁰ *Government Policy—Yugoslavia*, *supra* note 123, at X-3.

¹³¹ Artisien & Buckley, *supra* note 115, at 522.

¹³² *Id.* at 525.

B. *Current Law Governing Joint Ventures in Yugoslavia*

1. Government Policy and General Principles

There are more registered joint venture agreements with Yugoslav enterprises than with enterprises of any other socialist nation.¹³³ The primary aim of the Yugoslav law is similar to the Soviet law in its attempt to secure modern technology, increase exports, decrease imports, and increase the supply of goods to the domestic market.¹³⁴ Joint ventures also provide a means to integrate Yugoslav business organizations into the international division of labor on a long-term basis.¹³⁵ The Yugoslav law permits foreigners to invest resources in domestic enterprises with an understanding that both parties will share risks and profits in pursuit of joint business aims.¹³⁶

2. Registration and Operation

Under the joint venture law, the federal department responsible for energy and industry approves and registers joint venture contracts.¹³⁷ The joint venture contract is submitted in one of the Yugoslav languages, along with an economic and technical study providing justification for the investment.¹³⁸ In this economic study, the domestic organization of labor must describe the source of the Yugoslav partner's assets, the manufacturing technique, the raw materials utilized, and the joint venture's marketing plans. The study must also show that the joint venture will use raw materials in a manner that protects Yugoslavia's environment and is consistent with Yugoslavia's development policy.¹³⁹

Under the law, the federal department responsible for energy and industry will not approve joint venture contracts which establish unequal relationships between the partners, or restrict the Yugoslav partner's exports in a manner inconsistent with Yugoslavia's foreign economic relations. Similarly, the federal department will not approve contracts which contain provisions that are contrary to the security interests or technological development of Yugoslavia.¹⁴⁰

The federal department responsible for energy and industry may solicit opinions from the Yugoslav Chamber of Economy, or from federal and regional organizations, regarding any proposed joint venture contract.¹⁴¹ The federal

¹³³ *Government Policy—Yugoslavia*, *supra* note 123, at X-3.

¹³⁴ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 1.

¹³⁵ *Id.*

¹³⁶ *Id.* at art. 2.

¹³⁷ *Id.* at art. 46.

¹³⁸ *Id.* The Yugoslav languages are Serbo-Croatian, Croato-Serbian, Slovene, and Macedonian. *Government Policy—Yugoslavia*, *supra* note 123, at X-8.

¹³⁹ *Id.* at art. 48.

¹⁴⁰ *Id.* at art. 49.

¹⁴¹ *Id.* at art. 50. If these organizations do not return an opinion within thirty days from the date of the energy department's submission, the energy department considers the opinion positive. *Id.*

department responsible for energy and industry must rule on a joint venture contract within sixty days of receiving an application.¹⁴² The federal department, however, may return an application without approval and with proposed amendments to the contract.¹⁴³ When the joint venture contract is registered, the joint venture is valid from the date of the contract's formation.¹⁴⁴

The Yugoslav law does not specify the duration of a joint venture contract, but does encourage foreigners to pursue long-term investments.¹⁴⁵ The length of the joint venture is agreed upon in the contract.¹⁴⁶ Most western firms sign contracts for a ten-year period.¹⁴⁷

3. Participants, Property, and Rights

a. *Participants*

The Yugoslav participants in a joint venture are business organizations known as basic organizations of associated labor (BOALs), work organizations of associated labor (WOALs), and composite organizations of associated labor (COALs).¹⁴⁸ The law refers to them as domestic organizations of associated labor. The BOALs, WOALs, and COALs are legal entities with a hierarchical structure in which the BOALs are the primary units of organization.¹⁴⁹ The foreign partner negotiates directly with the Yugoslav business enterprises.¹⁵⁰ In cases in which a WOAL or COAL enters into a joint venture contract with a foreign firm, the contract designates one or more BOALs and imbues them with rights and obligations based on the contract.¹⁵¹ The Yugoslav law provides that original signatories to a joint venture contract may permit other foreign

¹⁴² *Id.*

¹⁴³ *Government Policy—Yugoslavia, supra* note 123, at X-8. The experience of western business is that up to one year is the length of time from submission of a contract to final registration. *Id.* at X-9: The federal department must register the joint venture contract within fifteen days after it gives final approval to the contract. The registration papers contain the following information: the names of the parties; the total amount of resources and each party's contribution; the length of the contract; and the date of formation, submission, and registration of the contract. *Yugoslav Joint Venture Law, supra* note 129, at art. 51.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at art. 3.

¹⁴⁶ *Id.* at art. 51.

¹⁴⁷ *Government Policy—Yugoslavia, supra* note 123, at X-7. The partners may renegotiate a contract renewal at the end of the ten-year period. *Id.*

¹⁴⁸ *Id.* at X-3; see *Yugoslav Joint Venture Law, supra* note 129, at art. 9.

¹⁴⁹ Buzescu, *supra* note 114, at 415-16. Each BOAL is composed of a workers' assembly and a workers' council which supplement the analogous components of the WOAL. BOALs may enter into self-management agreements with other BOALs and, as part of a WOAL, with the WOAL as well. COALs are structured in a similar fashion. *Id.*

¹⁵⁰ *Government Policy—Yugoslavia, supra* note 123, at X-3.

¹⁵¹ *Yugoslav Joint Venture Law, supra* note 129, at art. 9.

firms or domestic organizations of associated labor to join a joint venture contract.¹⁵²

The law does not permit foreigners to invest in joint ventures in the areas of insurance, trade, or social activities. The law, however, does permit foreigners to invest in joint ventures in the areas of health, recreation, scientific research, and, with the permission of the Federal Executive Council, social activities in which the joint venture contributes to the activities' development.¹⁵³ Although the Yugoslav law does not limit the amount of foreign investment in a joint venture contract, western firms generally contribute 25 percent of the total resources.¹⁵⁴

b. *Property*

The Yugoslav Joint Venture Law permits foreigners to invest cash, equipment, patents, industrial design and trademark rights, production techniques, and know-how. The foreign partner may only contribute equipment or raw materials if Yugoslavia does not produce them at an appropriate price or in sufficient quantity and quality to satisfy the joint venture contract.¹⁵⁵ The law states that property and rights should receive a realistic assessment in conformity with the law, but does not detail the method to be used.¹⁵⁶

The law permits a foreigner, with the consent of the Yugoslav partner, to transfer the assets and liabilities of a joint venture contract to another Yugoslav or foreign organization.¹⁵⁷ The law requires the foreign investor first to offer to transfer the assets and liabilities to the Yugoslav partner. The Yugoslav partner has sixty days to accept or reject the offer.¹⁵⁸ The joint venture law allows the Yugoslav organization of labor to sue the foreign partner if the latter transfers assets or liabilities in violation of the law. The federal department responsible for energy and industry must approve and register all transfers of assets and liabilities.¹⁵⁹

The law protects the property rights of foreign investors in several ways. The foreign party is entitled to recover resources invested in the joint venture

¹⁵² *Id.* at art. 10.

¹⁵³ *Id.* at art. 11.

¹⁵⁴ *Government Policy—Yugoslavia*, *supra* note 123, at X-4. Since there is no limit on the amount of foreign investment, a western firm could contribute 99 percent, but this has not occurred. *Id.*

¹⁵⁵ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 12.

¹⁵⁶ *Id.* at art. 34.

¹⁵⁷ *Id.* at art. 36. The law also states that the joint venture agreement may prohibit the parties from transferring assets or liabilities. *Id.*

¹⁵⁸ *Id.* at art. 37. The foreign investor must make a written offer of transfer to the Yugoslav partner. *Id.*

¹⁵⁹ *Id.* For example, the Yugoslav enterprise can sue the foreign partner if the foreign firm transfers assets to a third party on terms more favorable than those offered to the Yugoslav organization of labor. *Id.*

contract if the parties terminate the contract or if the Yugoslav organization of labor ceases to exist.¹⁶⁰ If the joint venture contract provides for the return of specific property to the foreign investor, the foreigner may remove this property from Yugoslavia.¹⁶¹ A foreign partner which invests resources to purchase real property is able to repatriate those resources if Yugoslavia expropriates the property.¹⁶²

c. *Rights*

Under the Yugoslav law, a written contract, approved by the federal government's agency responsible for industry and energy, governs relations between the foreign partner and the Yugoslav organization.¹⁶³ The Yugoslav law further protects the integrity of the contractual agreement by stating that neither new laws nor regulations can curtail a foreign partner's rights specified by a contract, the joint venture law, or other regulations.¹⁶⁴ Moreover, the Yugoslav law contains a savings clause which protects the foreign partner if Yugoslavia amends the joint venture regulations or changes the economic policy in effect on the joint venture's validation date.¹⁶⁵

The Yugoslav law is very specific in setting forth the areas that a joint venture contract may regulate. Thus, joint venture contracts must specify the purpose and terms of the investment, the amount invested and the share contributed by each side, the terms for repayment of both income and initial capitalization, and the mutual obligations in the event the business fails.¹⁶⁶ The contract must also describe the composition and power of the joint board, the method to settle disputes, and the means for securing foreign exchange in order to pay the foreign partner its income and return its investment.¹⁶⁷ In addition, the Yugoslav law provides for joint ventures to obtain credit.¹⁶⁸

The law also protects the partners' rights in other areas. For example, the original signatories to a joint venture contract may permit other foreign partners and Yugoslav organizations to become part of the joint venture even if they are

¹⁶⁰ *Id.* at art. 39. The amount of resources recoverable is diminished by the foreign partner's losses. *Id.*

¹⁶¹ *Id.* at art. 38.

¹⁶² *Id.* at art. 43. The law also provides that the organization which expropriates the property should reimburse the Yugoslav organization of labor for the amount owed to the foreign partner. *Id.*

¹⁶³ *Id.* at art. 4.

¹⁶⁴ *Id.* at art. 5.

¹⁶⁵ *Id.* at art. 6. The Yugoslav law states that the regulations in effect on the date the parties sign the contract, or other mutually agreed upon methods of regulation, shall govern the foreign partner if they are more favorable. This provision, however, does not apply to (1) taxes and assessments the BOAL pays to the community and (2) contributions to self-management communities. *Id.*

¹⁶⁶ *Id.* at art. 7.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at art. 8.

not involved in the full implementation of the business.¹⁶⁹ Either the foreign or Yugoslav partner may cancel a joint venture contract before its completion if the enterprise loses money consistently, if the joint venture does not achieve the aims specified in the joint venture contract, if one of the partners does not fulfill essential obligations of the contract, or if the circumstances in existence at the time the parties signed the contract change substantially.¹⁷⁰ The joint venture law permits the parties to settle disputes in Yugoslav courts, or, if the parties choose, in a Yugoslav or foreign arbitration tribunal.¹⁷¹

4. Management and Labor

In addition to protecting the property and rights of joint venture partners, the law also regulates management and labor relations. The law permits the foreign partner and the Yugoslav organization to set up a joint board to decide matters by mutual agreement.¹⁷² This board decides all issues relevant to the joint venture with input from Yugoslav representatives of the organization of associated labor.¹⁷³ The parties determine the composition and voting procedures of the board,¹⁷⁴ and delineate the issues which require mutual agreement in the joint venture contract.¹⁷⁵ The foreign partner cannot have more representatives on the board than the Yugoslav organization,¹⁷⁶ but a foreign partner which invests less than 50 percent of total resources could have an equal number of representatives as the Yugoslav partner.¹⁷⁷ BOALs involved in the joint venture have representatives on the joint business board.¹⁷⁸

The law also delineates the rights and responsibilities of the enterprise's labor force. Workers in the basic organization of labor have the right to allocate the Yugoslav partner's share of income for personal and collective use in accordance with self-management law.¹⁷⁹ Workers in the basic organization of associated labor are also required to allocate a share of income to improve and expand the productive forces of the joint venture.¹⁸⁰

¹⁶⁹ *Id.* at art. 10.

¹⁷⁰ *Id.* at art. 13.

¹⁷¹ *Id.* at art. 57.

¹⁷² *Id.* at art. 15.

¹⁷³ *Id.* at art. 17.

¹⁷⁴ *Id.* at art. 15.

¹⁷⁵ *Id.* at art. 16.

¹⁷⁶ *Id.*

¹⁷⁷ *Government Policy—Yugoslavia*, *supra* note 123, at X-7. Typically, joint boards have three members from each side. *Id.* at X-8.

¹⁷⁸ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 16.

¹⁷⁹ *Id.* at art. 22.

¹⁸⁰ *Id.* at art. 24.

5. Conduct of Economic Activity

In Yugoslavia, the system of worker self-management has replaced the centralized state planning found in countries such as China and the Soviet Union.¹⁸¹ Each Yugoslav enterprise participates in planning for economic development through the adoption of economic plans and a development strategy.¹⁸² Nevertheless, the Yugoslav law does regulate the joint enterprise in the areas of supplies, profits, and taxation.

a. *Supplies*

Despite the decentralized nature of the Yugoslav economy, the joint venture law provides for some central regulation of supplies. For example, a domestic organization of associated labor which seeks approval of a joint venture contract must submit information on the type, quantity, and value of raw and intermediate materials which it intends to import.¹⁸³ The law states that the federal department responsible for energy and industry may regulate certain equipment and raw material imports, and may grant concessions for their use to the organization of associated labor. The federal department grants the concessions at the time it approves the joint venture contract, and the approval is valid for the term of the contract.¹⁸⁴ Yugoslavia imposes fines on domestic organizations of labor which use equipment or raw materials for purposes inconsistent with the joint venture contract.¹⁸⁵

b. *Profits*

The Yugoslav law places some restrictions on the joint venture's profits. The law allows a foreign partner in a Yugoslav joint venture to receive income in proportion to the amount of the foreigner's investment. The foreigner ceases to collect income when it receives an amount equal to the sum of the value of resources that it has invested and the compensation for the use of those resources.¹⁸⁶ The foreign partner also ceases to collect income after the expiration of the joint venture contract whether or not the foreigner has collected the value of its investment. The joint venture law prohibits foreign partners from securing a permanent share in the income of a joint venture's domestic organization of associated labor.¹⁸⁷

¹⁸¹ Buzescu, *supra* note 114, at 429.

¹⁸² *Id.*

¹⁸³ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 48.

¹⁸⁴ *Id.* at art. 53.

¹⁸⁵ *Id.* at art. 58.

¹⁸⁶ *Id.* at art. 18. The law requires the Yugoslav organization to keep a separate record of the amount of income it generates through activity with the foreign partner. *Id.* at art. 19.

¹⁸⁷ *Id.* at art. 18.

The law permits the joint enterprise to deduct certain costs prior to the calculation of profits earned. Deductions from gross income include typical business expenses such as material costs and depreciation.¹⁸⁸ The joint venture, however, does not subtract from the foreign partner's share of profits any costs for national defense, social obligations, or insurance premiums for resources that the joint venture does not use.¹⁸⁹

The law permits the foreign partner to transfer profits abroad in hard currency in accordance with Yugoslavia's law on foreign exchange.¹⁹⁰ The joint venture's exports generate foreign exchange for use in hard currency profit transfers.¹⁹¹ The foreign partner also may reinvest profits in the joint venture, invest them in a contract with another domestic organization of associated labor, or use them to purchase Yugoslav products.¹⁹²

Although Yugoslavia rarely permitted joint ventures to purchase local products with dinar profits, a decree issued in 1986 eased restrictions in this area.¹⁹³ The decree permits the partners to stipulate in the contract whether the joint venture may use the foreigner's dinar profits to purchase products on the Yugoslav market and ship them to the foreigner's country.¹⁹⁴ The decree also permits the foreign partner to transfer nonconvertible dinars abroad or to transfer the dinars to other foreign firms.¹⁹⁵

c. Taxation

The joint venture law does not address the issue of taxes specifically. Foreign partners negotiate tax payments based on the tax schedule in effect in the republic or province in which the domestic organization of associated labor exists.¹⁹⁶ There are indications that the republics and provinces have agreed to tax foreign partners' profits at a rate of 10 percent, but at least one republic still utilizes a 30 percent tax rate.¹⁹⁷

¹⁸⁸ *Id.* at art. 20. The foreign partner and the Yugoslav organization of labor can determine depreciation rates. The parties deduct these costs from gross income. *Id.*

¹⁸⁹ *Id.* at art. 21.

¹⁹⁰ *Id.* at art. 30.

¹⁹¹ *Government Policy—Yugoslavia, supra* note 123, at X-5.

¹⁹² *Id.* *Yugoslav Joint Venture Law, supra* note 129, at art. 30. Yugoslavia's law on foreign exchange regulates the purchase of products on the Yugoslav market with profits paid in Yugoslav dinars. *Id.* at art. 31.

¹⁹³ *Government Policy—Yugoslavia, supra* note 123, at X-6.

¹⁹⁴ *Id.* The decree was published in *Sluzbeni List, OFFICIAL GAZETTE* no. 68, item 971, Dec. 1986. In the past, Yugoslavia only permitted the joint venture to purchase local products with dinar profits if the joint venture was involved in a service industry, or in the production of goods prohibited from export. *Id.*

¹⁹⁵ *Id.* A foreign firm would use the dinars for local payments. *Id.*

¹⁹⁶ *See id.* at X-8.

¹⁹⁷ *Id.* The republic of Croatia uses the higher tax rate. *Id.*

IV. THE PEOPLE'S REPUBLIC OF CHINA

In contrast to Yugoslavia's support for joint ventures, China has a tumultuous history of foreign investment. Nevertheless, the Chinese have enacted joint venture legislation. The Chinese enacted the law within the context of a centralized economy.

A. *Historical Development of Joint Venture Legislation in China*

Since the 1949 revolution, the Chinese have not consistently supported foreign investment in their country. In the 1950s, the Soviet Union and other Eastern European countries invested in China, but government campaigns in 1957 stopped this investment.¹⁹⁸ In the early 1960s, the Chinese permitted cooperative agreements between municipalities and foreign firms which resulted in the establishment of joint enterprises in sugar refineries, hydroelectric plants, textile mills, and rubber factories.¹⁹⁹ Between 1964 and 1976, however, the Cultural Revolution created economic chaos in China which caused the rule of law to deteriorate.²⁰⁰ In 1975, the Chinese government announced a program to modernize the country and the next year arrested the leaders of the Cultural Revolution.²⁰¹ The Chinese adopted a new Constitution in 1978²⁰² and began to create an environment conducive to foreign investment.²⁰³

In 1979, China enacted joint venture legislation as part of this broader effort to reform the economy.²⁰⁴ When the government passed the law, scholars maintained that the Chinese Constitution did not permit foreigners to own productive resources.²⁰⁵ The Chinese amended the Constitution in 1982, granting express permission for foreign entities to invest in China.²⁰⁶ Four years after enactment of the joint venture legislation, China promulgated joint venture

¹⁹⁸ Rich, *Joint Ventures in China: The Legal Challenge*, 15 INT'L LAW. 183, 184 (1981).

¹⁹⁹ *Id.* at 184.

²⁰⁰ Note, *supra* note 8, at 1006 n.2. The Cultural Revolution was a period in China when Mao Zedong encouraged popular uprisings against intellectuals, technicians, and bureaucrats who supported the rule of law. *Id.*

²⁰¹ Rich, *supra* note 198, at 184. The leaders of the Cultural Revolution were known as the "Gang of Four." *Id.*

²⁰² Note, *supra* note 8, at 1006 n.2.

²⁰³ Rich, *supra* note 198, at 184.

²⁰⁴ The legislation is called *The Law of the People's Republic of China on Chinese-Foreign Joint Ventures*, adopted by Second Session of Fifth National People's Congress, July 1, 1979, promulgated July 8, 1979, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 507 (Practising Law Institute 1986) [hereinafter *Chinese Joint Venture Law*].

²⁰⁵ See, e.g., Rich, *supra* note 198, at 185. Rich's article was published in 1981.

²⁰⁶ Yuqing, *Like Bamboo Shoots After a Rain: Exploiting the Chinese Law and New Regulations on Sino-foreign Joint Ventures*, 8 NW. J. INT'L L. & BUS. 59, 64 (1987). The Chinese established the legal basis for foreign investment legislation in article 18 of the Constitution which permitted foreign enterprises and individuals to invest in China. CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA adopted by Fifth Session of Fifth National People's Congress, Dec. 4, 1982 [hereinafter CHINESE CONSTITUTION].

regulations to clarify many ambiguous issues in the original law.²⁰⁷ The Chinese experience with joint ventures is unique because legal codes to monitor foreign commercial relations did not exist in China until the late 1970s.²⁰⁸ Since there was no precedent for a joint venture law, the Chinese relied on the foreign investment laws of Yugoslavia and other countries including Japan, Taiwan, and Romania.²⁰⁹

Since 1979, the Chinese have promulgated many additional laws and regulations to encourage the initiation of joint ventures.²¹⁰ As a result, by December 1986 there were 7,738 enterprises involving foreign investors in China.²¹¹ The 7,738 enterprises included 4,390 contractual joint ventures, 3,210 equity joint ventures, and 138 wholly foreign-owned enterprises.²¹² One half of these enterprises are now operating, and almost all of these are profitable.²¹³

China has secured \$16.7 billion in overseas investment from these joint ventures.²¹⁴ Foreigners have already invested \$7.43 billion of the \$16.7 billion under contract.²¹⁵ This includes \$2.1 billion which U.S. companies have invested in 130 joint ventures with the Chinese.²¹⁶ The United States is now China's third largest trading partner, and U.S. companies are involved in some of the largest joint ventures in China.²¹⁷

B. *Current Law Governing Joint Ventures in China*

1. Government Policy and General Principles

China, like Yugoslavia and the Soviet Union, seeks to use joint ventures to expand international economic cooperation and to promote the exchange of

²⁰⁷ *Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures using Chinese and Foreign Investment*, promulgated by State Council, Sept. 20, 1983, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 513 (Practising Law Institute 1986) [hereinafter *Chinese Joint Venture Regulations*]. The Chinese use the regulations to implement the law. *Id.*

²⁰⁸ Yuqing, *supra* note 206, at 63.

²⁰⁹ Rich, *supra* note 198, at 187.

²¹⁰ Yuqing, *supra* note 206, at 64. Yuqing, *supra*, details a list of the laws and regulations which the Chinese have promulgated since 1979. *Id.* at 64 n.8.

²¹¹ *Id.* at 62.

²¹² *Id.* The Chinese distinguish joint ventures from situations in which the foreign firm contributes 100 percent of the equity in an enterprise. The latter are governed by *The Law of the People's Republic of China on Wholly Foreign-Owned Enterprises*, approved by Fourth Session of the Sixth National People's Congress, April 12, 1986, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 141 (Practising Law Institute 1986).

²¹³ Yuqing, *supra* note 206, at 62.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* For example, the Pingshuo Coal Mine, the Beijing Boiler Project, and the Beijing Jeep Company are three of the largest joint venture projects in China. *Id.* at 62 n.3.

technology.²¹⁸ China expects foreigners to establish joint ventures in a spirit of equality and mutual benefit.²¹⁹ Joint ventures provide a means for China to increase the quality and variety of products, save energy, and expand exports.²²⁰ Foreign investment in joint enterprises also increases the amount of China's hard currency income and provides technical and managerial training to Chinese businesspersons.²²¹ The Chinese regulations state that joint ventures should promote economic development and socialist modernization.²²²

2. Registration and Operation

The Chinese government has established organizations to help foreign investors find partners for joint venture projects.²²³ The customary practice is to select a partner, negotiate the details of the joint venture, and sign a letter of intent.²²⁴ Although the letter of intent does not bind either party, it provides a framework for future cooperation.²²⁵ The Chinese partner uses the letter of intent to develop a project proposal²²⁶ for submission to local authorities.²²⁷ After the local authorities approve the proposal, the partners prepare a feasibility study.²²⁸ The partners draft a joint venture agreement and articles of association from the feasibility study.²²⁹

In the next stage of the registration process, the Chinese partner submits the following material to the provincial, regional, or municipal authority empowered to ratify the project:²³⁰ the feasibility study; signed copies of the joint venture agreement, contract, and articles of association; a list of candidates for top management positions; and written opinions from local officials responsible for the joint venture business.²³¹ The Chinese officials approve or reject the

²¹⁸ *Chinese Joint Venture Law*, *supra* note 204, at art. 1.

²¹⁹ *Id.*

²²⁰ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 4.

²²¹ *Id.*

²²² *Id.* at art. 3.

²²³ Yuqing, *supra* note 206, at 67. The government organizations at the national level include the Bureau of Foreign Investment Control in the Ministry of Foreign Economic Relations and Trade (MOFERT) and the China International Trust and Investment Corporation (CITIC). *Id.*

²²⁴ *Id.* at 69.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 9. The project proposal includes information such as the source of raw materials and equipment, the amount of investment, and the duration of the joint venture. Yuqing, *supra* note 206, at 69.

²²⁸ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 9. Although the regulations do not require the parties to solicit approval of the feasibility study, one scholar advises the parties to seek approval if the joint venture will utilize large amounts of critical raw materials such as coal or oil. *See* Yuqing, *supra* note 206, at 69-70.

²²⁹ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 9.

²³⁰ *Id.* at art. 8.

²³¹ *Id.* at art. 9.

project within three months of the date that the documents are submitted.²³² The applicant must register the joint venture within one month after the authorities approve the project.²³³ The Chinese government will not approve joint ventures which impinge upon China's sovereignty, violate Chinese law, or hinder China's economic development.²³⁴ The government also will not approve proposals which result in environmental pollution or serious inequities between the partners.²³⁵

The joint venture regulations permit the parties to determine the duration of the project in the joint venture agreement and articles of association.²³⁶ Most projects last between ten and thirty years.²³⁷ The regulations, however, allow for longer periods of time for projects which involve large amounts of investment, a long period of construction, or low interest rates on capital.²³⁸

3. Participants, Property, and Rights

a. *Participants*

The Chinese law provides that participants in a joint venture form a limited liability company. In such a company, the participants share profits, risks, and losses in proportion to the amount of capital each party contributes to the joint venture. The Chinese law requires a foreign partner to invest a minimum of 25 percent of the equity in a joint venture,²³⁹ but does not limit the maximum amount of foreign investment.²⁴⁰ Foreign participants in joint ventures consist of companies, enterprises, economic organizations, or individuals.²⁴¹ The law, however, does not include individuals in the category of Chinese participants.²⁴²

The Chinese regulations encourage foreigners to initiate joint ventures in specific areas of the economy. These areas include industries which will increase the development of science and technology in China, such as energy development, machine manufacturing, electronics, and computers. The regulations also

²³² *Id.* at art. 10.

²³³ *Id.* at art. 11. The joint venture is registered with the provincial, regional, or municipal administrative bureau for industry and commerce. *Id.*

²³⁴ *Id.* at art. 5.

²³⁵ *Id.*

²³⁶ *Id.* at art. 101. The parties may apply to extend the duration of the joint venture six months prior to the joint venture's expiration date. *Id.*

²³⁷ Yuqing, *supra* note 206, at 95.

²³⁸ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 100.

²³⁹ *Chinese Joint Venture Law*, *supra* note 204, at art. 4.

²⁴⁰ Yuqing, *supra* note 206, at 63.

²⁴¹ *Chinese Joint Venture Law*, *supra* note 204, at art. 1.

²⁴² *Id.* There are very few joint ventures in China involving Chinese individuals. Yuqing, *supra* note 206, at 63 n.4.

include industries which generate exports or hard currency, such as textiles and tourism.²⁴³

b. *Property*

The joint venture regulations also prescribe how the participants may invest property in the enterprise. Either participant may contribute investments in the form of cash, buildings, equipment, materials, industrial property, know-how, or the use of a location. The parties jointly determine the value of each side's contribution, or consult the opinion of a third party.²⁴⁴ When the contribution is in the form of cash, the partners convert it into Chinese currency at an exchange rate set by the State General Administration of Foreign Exchange Control.²⁴⁵

The regulations condition the contribution of equipment or materials on certain criteria. For example, equipment or materials must be essential to the joint venture's production and unavailable in China at the requisite price or level of sophistication. The parties cannot value such equipment or materials at prices higher than the prices in effect in international markets.²⁴⁶

Similar requirements apply to foreign investments in the form of industrial property or know-how. The regulations prescribe that such investments contribute to the production of exports or products needed in China, improve the performance of current Chinese products and raise productivity, or result in savings of raw materials, fuel, or power.²⁴⁷ The foreign investor has a responsibility to substantiate the validity of the contribution of industrial property or know-how investments.²⁴⁸

The regulations permit either partner to assign all or part of its investment to a third party with the consent of the other partner and the authority that approved the joint venture. Preference is given to either party over third party assignees. No assignment is valid if it gives more favorable treatment to the third party than to the other partner.²⁴⁹

c. *Rights*

The Chinese Constitution is the basis for the protection of foreign investment under China's foreign investment laws and regulations. Article 18 of the Constitution allows foreign firms and individuals to invest in China in accordance

²⁴³ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 3.

²⁴⁴ *Id.* at art. 25.

²⁴⁵ *Id.* at art. 26. The Chinese currency used is renminbi. *Id.*

²⁴⁶ *Id.* at art. 27.

²⁴⁷ *Id.* at art. 28.

²⁴⁸ *Id.* at art. 29.

²⁴⁹ *Id.* at art. 23.

with Chinese law.²⁵⁰ The Chinese Joint Venture Law protects the investment, profits, rights, and interests of foreigners in joint ventures which the Chinese government has authorized.²⁵¹ The Chinese Joint Venture Regulations give direction for implementation of the Chinese Joint Venture Law.²⁵²

China has supplemented domestic legislation which protects foreign investment with investment protection agreements with other countries.²⁵³ These agreements ensure that if China expropriates their investments, China will compensate foreign investors through repatriation of investments, licensing fees, profits, and loan payments.²⁵⁴ China has signed these reciprocal agreements with eighteen countries.²⁵⁵ China also has signed taxation agreements to encourage foreign investment.²⁵⁶

Participants in a Chinese joint venture have the right to conduct business independently within the laws of China, the joint venture agreement, the contract, and the articles of association.²⁵⁷ Each partner in a joint venture is liable to the joint venture to the extent of the partner's capital investment.²⁵⁸ The joint venture regulations provide for dissolution of a joint venture in the event of severe losses, breach of the joint venture agreement or articles of association, an occurrence of *force majeure* such as war, the failure to achieve business goals, or other reasons which the participants delineate in the contract or joint venture agreement.²⁵⁹

4. Management and Labor

Since there is no corporate law in China, the parties in a Chinese joint venture should negotiate issues involving control and management.²⁶⁰ The parties are free to negotiate any rules which the joint venture regulations do not specifically address.²⁶¹ Under Chinese law, the highest authority of the joint venture is the

²⁵⁰ See CHINESE CONSTITUTION, *supra* note 206, at art. 18.

²⁵¹ *Chinese Joint Venture Law*, *supra* note 204, at art. 2.

²⁵² See *Chinese Joint Venture Regulations*, *supra* note 207.

²⁵³ Yuqing, *supra* note 206, at 65.

²⁵⁴ *Id.*

²⁵⁵ *Id.* at 65 n.9. For example, China has signed agreements with Romania, Sweden, Italy, Thailand, and France. The United States and China are currently in negotiations regarding a reciprocal agreement. *Id.*

²⁵⁶ *Id.* at 65. China has signed taxation treaties with fourteen nations. These agreements prevent tax evasion and protect investors from double taxation. *Id.*

²⁵⁷ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 7.

²⁵⁸ *Id.* at art. 19.

²⁵⁹ *Id.* at art. 102.

²⁶⁰ Yuqing, *supra* note 206, at 80.

²⁶¹ *Id.*

board of directors.²⁶² The Chinese partner appoints the chairman of the board and the foreign partner appoints the vice-chairman.²⁶³

The Chinese regulations give the chairman the power to represent the joint venture legally²⁶⁴ and to call and preside over meetings.²⁶⁵ Since the chairman's other powers are unclear, the parties can negotiate limitations on the chairman's powers in the articles of association and the joint venture contract.²⁶⁶ The joint venture partners determine the size and composition of the board of directors in the articles of association and the joint venture contract.²⁶⁷ The Chinese regulations give the majority investor the ability to protect its interests²⁶⁸ by stating that the parties shall refer to the ratio of capital contributions to determine distribution of the directors on the board.²⁶⁹

Unlike the Yugoslav or Soviet laws, the Chinese regulations state that certain decisions require a unanimous vote of the directors present. These decisions include votes to amend the joint venture's articles of association, to terminate or dissolve the joint venture, to increase or assign the joint venture's capital, and to merge the joint venture with another economic organization.²⁷⁰

The Chinese regulations provide for the establishment of a management office with a general manager and deputy general managers to administer the joint venture on a daily basis.²⁷¹ The regulations permit Chinese or foreign citizens to act as general and deputy managers.²⁷² This gives the foreign partner an ability to exercise greater influence over product quality.

Employees in Chinese joint ventures have the right to organize trade unions which may sign and administer labor contracts with joint enterprises.²⁷³ According to the regulations, trade unions in joint ventures protect the democratic rights and material interests of the workers, assist the joint venture in the administration of welfare and bonus funds, organize political and scientific studies, and educate workers to fulfill the economic plan of the enterprise.²⁷⁴ The regulations permit union representatives to attend meetings of the board

²⁶² *Chinese Joint Venture Regulations*, *supra* note 207, at art. 33.

²⁶³ *Id.* at art. 34.

²⁶⁴ *Id.* at art. 37.

²⁶⁵ *Id.* at art. 35.

²⁶⁶ Yuqing, *supra* note 207, at 82. For example, the parties can negotiate limitations on the chairman's veto and procedural powers. *Id.*

²⁶⁷ *Chinese Joint Venture Law*, *supra* note 204, at art. 6.

²⁶⁸ Yuqing, *supra* note 204, at 81 n.65.

²⁶⁹ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 34.

²⁷⁰ *Id.* at art. 36. The parties can include in the articles of association other items which require a unanimous vote. Yuqing, *supra* note 204, at 81.

²⁷¹ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 38.

²⁷² *Id.* at art. 40.

²⁷³ *Id.* at arts. 95-96.

²⁷⁴ *Id.* at art. 97.

of directors as nonvoting members and report the opinions of workers regarding production and operation of the joint venture.²⁷⁵

Since the enactment of the joint venture law and regulations, China has attempted to define further the rights of managers in joint venture enterprises. In October 1986, China enacted Provisions of the State Council of the People's Republic of China for the Encouragement of Foreign Investment (October 1986 Provisions).²⁷⁶ The October 1986 Provisions guarantee the joint venture autonomy and the right to manage itself "in accordance with international advanced scientific methods."²⁷⁷ Joint venture enterprises are free to determine production and operation plans, to purchase production materials, to raise and use funds, to sell products, and to determine levels and forms of employee compensation.²⁷⁸ These provisions also give joint venture enterprises the right to determine organizational and personnel systems, employ or dismiss management and staff personnel, and penalize workers who violate the joint venture's rules.²⁷⁹ These new management powers strengthen the autonomy of the joint venture in its dealings with local officials.²⁸⁰

5. Conduct of Economic Activity

The influence of the October 1986 Provisions is also evident in the areas of the law which affect supplies and profits. The laws affecting taxation have not changed substantially. The sections of the Chinese legislation which deal with the conduct of economic activity are designed to encourage investment.

a. *Supplies*

The Chinese Joint Venture Law and Regulations initially controlled the purchase of supplies rigorously. The law required joint ventures to file production and operating plans with the responsible departments and to strive to purchase raw and processed materials, fuels, parts, and necessary equipment in China.²⁸¹ The regulations stipulated that joint ventures should attempt to conserve energy and materials,²⁸² conform to the development of China's national economy, and

²⁷⁵ *Id.* at art. 98.

²⁷⁶ See *Provisions of the State Council of the People's Republic of China for the Encouragement of Foreign Investment*, promulgated Oct. 11, 1986, reprinted in *BUS. CHINA* 154-55 (*Bus. Int'l Asia/Pacific Ltd. ed. Oct. 20, 1986*) [hereinafter *October 1986 Provisions*].

²⁷⁷ *Id.* at art. 15.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Provisions To Encourage: Look Closely—There's Promise in the Promises*, *BUS. CHINA* 153 (*Bus. Int'l Asia/Pacific Ltd. ed. Oct. 20, 1986*).

²⁸¹ *Chinese Joint Venture Law*, *supra* note 204, at art. 9.

²⁸² *Chinese Joint Venture Regulations*, *supra* note 207, at art. 4.

avoid environmental pollution.²⁸³ The joint venture had the right to purchase materials abroad, but if supply conditions did not differ in or outside of China, the regulations required the joint venture to purchase Chinese materials.²⁸⁴ The regulations also divided supplies into categories and permitted joint ventures to obtain some categories only from specific government departments.²⁸⁵ The government departments sold such supplies only in accordance with the government's central plan.²⁸⁶

The October 1986 Provisions eased some of the regulatory restrictions on the procurement of supplies. The provisions state that joint ventures alone shall determine production and operation plans.²⁸⁷ The provisions give joint ventures the right to purchase production materials independently²⁸⁸ and to import certain machinery, equipment, and raw materials without approval applications or import licenses.²⁸⁹

b. *Profits*

China's legislation regulating the profits of joint enterprises is similar to the provisions controlling supplies to the extent that both sections encourage investment. Since the Chinese joint venture is a limited liability company, the partners share profits and losses in proportion to the amount of investment.²⁹⁰ The parties delineate this figure in the joint venture contract.²⁹¹ Deductions from gross profits include taxes, a reserve fund, an employee bonus and welfare fund, and a venture expansion fund.²⁹² The law permits the foreign partner to remit net profits abroad in hard currency, as well as other funds, through the Bank of China.²⁹³

The sale of goods in China's domestic market is a source of profit for joint ventures. The Chinese regulations restricted the sale of certain goods on the domestic market and incorporated the sale of these products into the government's central plan.²⁹⁴ The October 1986 Provisions, however, permit joint ventures to sell their products on the domestic market without government interference.²⁹⁵

²⁸³ *Id.* at art. 5.

²⁸⁴ *Id.* at art. 57.

²⁸⁵ Yuqing, *supra* note 206, at 116.

²⁸⁶ *Id.*

²⁸⁷ *October 1986 Provisions*, *supra* note 276, at art. 15.

²⁸⁸ *Id.*

²⁸⁹ *Id.* at art. 13. The provisions stipulate that only the joint venture can use these imports. *Id.*

²⁹⁰ *Chinese Joint Venture Law*, *supra* note 204, at art. 4.

²⁹¹ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 14.

²⁹² *Id.* at art. 7.

²⁹³ *Id.* at art. 10.

²⁹⁴ *See id.* at art. 64.

²⁹⁵ *October 1986 Provisions*, *supra* note 276, at art. 15.

c. *Taxation*

The Chinese government taxes joint ventures at a rate of 33 percent of net income.²⁹⁶ This tax rate is comprised of a national tax of 30 percent of net income and a local tax equal to 10 percent of the national base.²⁹⁷ The tax law requires foreigners to pay an additional 10 percent tax on profits remitted from China.²⁹⁸ The Chinese Joint Venture Regulations require foreign employees in joint ventures to pay taxes in accordance with the law and rules that govern individual employees.²⁹⁹

The Chinese have enacted several provisions to give tax preferences to foreign investors.³⁰⁰ For example, the government will forgive the taxes of a new joint venture which plans to operate for more than ten years in the first and second profitable years; the government also will forgive 50 percent of the new joint venture's regular tax in years three through five.³⁰¹ The law also gives tax reductions to joint ventures located in remote, underdeveloped areas of China and gives tax reductions to joint ventures which operate low profit endeavors.³⁰² Foreign participants which reinvest some profits in China for more than five years will obtain a rebate of the tax paid on these profits.³⁰³

²⁹⁶ Yuqing, *supra* note 206, at 89. The law which governs the taxation of joint ventures is called *The Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Joint Ventures*, adopted by Third Session of the Fifth National People's Congress, promulgated on Sept. 10, 1980, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 547 (Practising Law Institute 1986) [hereinafter *Chinese Income Tax Law*]. For China's revision of the original income tax law in 1983, see *Attachment: Modification of Article 5, Article 8 and Article 9 of the Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Joint Ventures*, adopted by Second Session of the Standing Committee of the Sixth National People's Congress, Sept. 2, 1983, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 551 (Practising Law Institute 1986) [hereinafter *Modification of Income Tax Law*]. China has enacted rules to implement the *Chinese Income Tax Law*. See *Rules for the Implementation of the Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Joint Ventures*, approved by State Council, Dec. 10, 1980, promulgated by Ministry of Finance, Dec. 14, 1980, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 553 (Practising Law Institute 1986).

²⁹⁷ *Chinese Income Tax Law*, *supra* note 296, at art. 3.

²⁹⁸ *Id.* at art. 4.

²⁹⁹ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 70. The tax law and rules governing individuals are *The Individual Income Tax Law of the People's Republic of China*, adopted by Third Session of the Fifth National People's Congress, promulgated on Sept. 10, 1980, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 573 (Practising Law Institute 1986) and *Rules for the Implementation of the Individual Income Tax Law of the People's Republic of China*, approved by State Council, Dec. 10, 1980, promulgated by Ministry of Finance, Dec. 14, 1980, reprinted and translated in LEGAL ASPECTS OF DOING BUS. WITH CHINA 577 (Practising Law Institute 1986). For a discussion of this law see Easson & Li, *Taxation of Foreign Business and Investment in the People's Republic of China*, 7 NW. J. INT'L L. & BUS. 666, 683-92 (1986).

³⁰⁰ Yuqing, *supra* note 206, at 90.

³⁰¹ *Chinese Income Tax Law*, *supra* note 296, at art. 5; *Modification of Income Tax Law*, *supra* note 296, at 551.

³⁰² *Chinese Income Tax Law*, *supra* note 296, at art. 5.

³⁰³ *Id.*

V. ANALYSIS OF THE SOVIET, YUGOSLAV, AND CHINESE JOINT VENTURE LAWS

In order to compare the Soviet Joint Venture Law to its counterparts in Yugoslavia and China, it is important to recognize that the joint venture laws of China and Yugoslavia represent two distinct legal conceptions of joint venture legislation.³⁰⁴ The Chinese joint enterprise is an example of a traditional conception of a joint venture: the joint venture is similar in legal form to a stock company which exists in the foreign partner's non-socialist country.³⁰⁵ Under the traditional conception, the joint venture partners have property rights which pertain to shares or parts of the joint venture whether or not they are shareholders.³⁰⁶

The Yugoslav idea of a joint venture is different from the traditional conception.³⁰⁷ Under Yugoslav law, the foreign partner invests in legal entities which already exist in the Yugoslav socialist system of "worker self-management."³⁰⁸ Foreign partners cannot initiate a new joint venture with direct investments.³⁰⁹ As a result, the joint venture based on self-management, as practiced in Yugoslavia, differs from the traditional conception in two ways.³¹⁰ First, the foreign partner's investment represents social property which gives that partner the right to make demands on the joint venture, but negates any property right in the investment.³¹¹ Second, all Yugoslav companies are workers' organizations, and worker self-management is the basis of direction of these organizations.³¹² The Yugoslav Joint Venture Law does not distinguish between workers' organizations and joint ventures.³¹³

A. Government Policy and General Principles

Despite the distinctions in the legal bases of joint ventures, the laws of Yugoslavia and China have stated goals similar to those of the Soviet law. All three

³⁰⁴ Messmann, *Structural Conflicts in Joint Ventures*, 10 INT'L BUS. LAW. 118, 119 (1982).

³⁰⁵ *Id.* The traditional conception of a joint venture also exists in other socialist countries such as Bulgaria, Hungary, Poland, and Romania. *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.* at 120.

³⁰⁸ Buzescu, *supra* note 114, at 415. The Yugoslav system of worker self-management was first introduced in 1950 and is based on the Marxist principle that the state eventually "perishes" as socialism develops. Messmann, *supra* note 304, at 120. The Constitution and laws of Yugoslavia provide for labor organizations such as the workers' collectivity, the workers' council, and the board of directors. The workers' collectivity is the most important organization. It decides through referendum all the decisions of the enterprise, including the plans, budget, balance sheet, and profit-loss levels. *Id.*

³⁰⁹ Buzescu, *supra* note 114, at 415. Foreign partners who want to invest in a joint venture in Yugoslavia must find an already existing legal entity that satisfies their needs. *Id.*

³¹⁰ Messmann, *supra* note 304, at 120.

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

laws seek to develop export-oriented industries, reduce imports, and attract modern technology and scientific methods of production.³¹⁴ The laws also aim to increase the quality and variety of goods for sale on the domestic market and provide a source of hard currency revenue.³¹⁵

The Soviet and Chinese joint venture laws emphasize certain principles which are not evident in the Yugoslav law. For example, both the Soviet and the Chinese laws express the position that the joint venture relationship should be mutually beneficial.³¹⁶ This type of affirmative statement may reflect political tensions within the Chinese and Soviet societies which militate against foreign investment.³¹⁷ Unlike the Yugoslav law, the Soviet and Chinese joint venture laws seek to secure management training for their citizens.³¹⁸ The articulation of this goal may reflect the relative isolation of the Soviet and Chinese economies from the West in comparison to the Yugoslav economy.

Yugoslavia has a longer history of participation in joint ventures than China. Yugoslavia's experiences may provide some indication of whether the Soviet law will achieve its stated goals. Although there is no definitive data regarding the success of Chinese joint ventures, there is some evidence that Yugoslav joint ventures have not achieved all of the goals which the government sought to accomplish. For example, in 1984 Yugoslavia's foreign debt was twenty billion dollars; after almost twenty years of joint venture legislation, foreign investment has apparently made only a small positive contribution to the Yugoslav balance of payments.³¹⁹ This observation may serve as a caveat to the Soviet Union that joint ventures often attract only a limited amount of foreign capital.³²⁰

Moreover, in one study of the Yugoslav law, most foreign investors did not decentralize their research and development activities in Yugoslavia.³²¹ Similarly, foreign investors did not base many managerial and technical personnel from the foreign firm in Yugoslavia.³²² The study suggests that after the parties

³¹⁴ See *supra* notes 57, 134, 220 and accompanying text.

³¹⁵ See *supra* notes 17, 58, 134, 220-21 and accompanying text.

³¹⁶ See *supra* notes 53, 219 and accompanying text. See *Soviet Joint Venture Law*, *supra* note 9, at 1. The Soviet law notes that joint ventures allow trade to develop on a "stable and mutually advantageous basis." *Id.* Cf. *Chinese Joint Venture Law*, *supra* note 204, at art. 1. The Chinese law encourages the development of joint ventures "in accordance with the principle of equality and mutual benefit" *Id.*

³¹⁷ See *supra* notes 36-37, 198-200 and accompanying text.

³¹⁸ See *supra* notes 57, 221 and accompanying text.

³¹⁹ Artisien & Buckley, *supra* note 115, at 529-30.

³²⁰ Davidson, *First East-West Tax Conference May Open Soviet Bloc to Western Companies*, 35 TAX NOTES 230 (1987). At least one Soviet official has acknowledged that the Soviet law is not without flaws and that it will take some time for it to attract capital to the Soviet Union. *Id.*

³²¹ Artisien & Buckley, *supra* note 115, at 533.

³²² *Id.* In this study, 27 of 42 foreign firms involved in joint ventures in Yugoslavia did not base managerial staff in the host country. Thirty-five firms had no technical staff working on the joint venture. *Id.*

agreed upon standards of quality, the Yugoslav firm took control of the day-to-day running of the joint venture.³²³

B. *Registration and Operation*

The registration process is important to western investors because a lengthy process delays operation of the joint venture. Although it is time consuming, all three joint venture laws require the partners to submit a study which substantiates the viability of the joint venture.³²⁴ The Chinese and Yugoslav laws, however, unlike the Soviet law, specify that the government will not approve certain joint ventures, such as those which result in unequal relationships between partners.³²⁵ Such clauses may give China and Yugoslavia the flexibility to propose modifications in joint venture proposals without offending the foreign partner.

Integral to expedition of the registration process is the delineation of time parameters for approval of joint ventures. It is noteworthy that the Soviet law does not provide for a time period within which the proposals will be returned to the Soviet partners or to the foreign partner. This is an approach different from that taken by either the Chinese or Yugoslav governments. The Chinese law, for example, states that the Foreign Investment Commission of the People's Republic of China shall decide whether to approve or disapprove of the joint venture within three months after a joint venture partner submits the requisite documents to the Commission.³²⁶

The 1984 amendment to the Yugoslav law resulted in a faster approval procedure;³²⁷ western businesses reacted positively to this amendment.³²⁸ Prior to this amendment, the registration process for Yugoslav joint ventures often lasted one year or longer³²⁹ and was considered a disincentive to western investment.³³⁰ The Yugoslav commitment to avoid bureaucratic delays is evident in the fact that additional investments or reinvestments of capital are not treated

³²³ *Id.* at 533-34.

³²⁴ See *Soviet Joint Venture Law*, *supra* note 9, at 1; *Yugoslav Joint Venture Law*, *supra* note 129, at art. 46; *Chinese Joint Venture Regulations*, *supra* note 207, at art. 9.

³²⁵ See *Chinese Joint Venture Regulations*, *supra* note 207, at art. 5; *Yugoslav Joint Venture Law*, *supra* note 129, at art. 49.

³²⁶ *Chinese Joint Venture Law*, *supra* note 204, at art. 3. After the Foreign Investment Commission approves the project, the joint venture must obtain a license to do business. *Id.*

³²⁷ Artisien & Buckley, *supra* note 115, at 534; see *Yugoslav Joint Venture Law*, *supra* note 129, at art. 50. Article 50 states that the federal department responsible for energy and industry must give an applicant a decision within sixty days of the receipt of the application. *Id.*

³²⁸ See *supra* note 130 and accompanying text. Some scholars believe that the 1984 amendments have stimulated the interest of western firms in conducting joint ventures with Yugoslavia. Artisien & Buckley, *supra* note 115, at 522.

³²⁹ Artisien & Buckley, *supra* note 115, at 534.

³³⁰ *Id.* at 522.

as new contracts, but are annexed to the current contract.³³¹ The Yugoslav law also provides applicants with a procedure to appeal to the federal government,³³² a feature which does not exist in either the Soviet or Chinese laws.

The Soviets are attempting to shorten the approval period for joint ventures. For example, since the enactment of the joint venture legislation, the Soviets have changed the registration process to make the concept more amenable to western firms.³³³ The Soviets recognize that bureaucratic delays inhibit investment and that western firms want speedy decisions regarding the conditions and acceptability of a joint venture.³³⁴ The Soviets changed the registration process and now permit any branch ministry or Union Republic Council of Ministers to authorize small, local joint ventures without Moscow's approval.³³⁵

This Soviet rule is similar to the Chinese practice which permits municipalities such as Shanghai and Beijing to grant sole approval to joint ventures valued at less than one million dollars.³³⁶ In an effort to create incentives for western investment, the Chinese have granted more autonomy than the Soviet law permits. For example, the Beijing Municipal Planning Commission requires that departments approve or reject all documents of a joint venture proposal within one month of submission.³³⁷ This is a shorter time than the Chinese State Council provisions or the Soviet Joint Venture Law require.³³⁸

Despite the Soviet Union's intentions, firms have encountered delays in the registration process. These delays may be inherent in the nature of a centralized economy.³³⁹ For example, one firm has noted that it is difficult to determine which Soviet official is responsible for a particular project.³⁴⁰ In addition, the Soviets may make negotiations with a foreign firm contingent on the approval of a Foreign Trade Ministry, but rely on the western firm to initiate discussions with the Ministry.³⁴¹ Such delays frustrate the ability of the western firm to satisfy the Soviet's demand for the latest technology.³⁴²

³³¹ *Id.* at 534.

³³² *Yugoslav Joint Venture Law*, *supra* note 129, at art. 50.

³³³ *Soviets Introduce Broad Changes to JV Regulations*, BUS. E. EUR. 331 (Bus. Int'l ed. October 19, 1987) [hereinafter *Soviets Introduce Broad Changes*].

³³⁴ *Id.*

³³⁵ *See id.*; *Soviet Joint Venture Law Amendments*, *supra* note 10, at 2. Under the amendment, officials save time because they do not have to send papers to Moscow for approval. Moscow still must approve large investments involving a national joint venture. *Soviets Introduce Broad Changes*, *supra* note 333, at 331.

³³⁶ *See And Now Peking's Sweeteners*, BUS. CHINA 158 (Bus. Int'l Asia/Pacific Ltd. ed. Oct. 20, 1986) [hereinafter *Sweeteners*].

³³⁷ *Id.*

³³⁸ *Id.*; *see supra* notes 59-64 and accompanying text. In fact, the Soviet law does not provide for a time period in which the government must return proposals to the foreign partner.

³³⁹ *See Contracts With EE Buyers: Still "Hurry Up and Wait,"* BUS. E. EUR. 115 (Bus. Int'l ed. Apr. 13, 1987).

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.* at 116.

C. *Participants, Property, and Rights*

1. Participants

The Soviet Union, Yugoslavia, and China deal with the issue of joint venture participation differently. Unlike the Soviet or Chinese laws, the Yugoslav law specifically limits the areas in which foreign firms may engage in joint ventures. The Yugoslav law prohibits joint venture contracts in the areas of insurance, trade, and social activities (excluding health and recreation services).³⁴³ One consequence of the specificity in the Yugoslav law, in comparison to the Soviet and Chinese laws, is that Yugoslavia avoids rejecting undesirable offers because the law states in advance which areas are inaccessible.

Although the Chinese and Soviet laws do not specifically limit the areas of joint venture activity, these governments have the same power as Yugoslavia to limit joint ventures because they must approve all joint ventures.³⁴⁴ Moreover, the Soviet and Chinese laws encourage investment in certain areas of the economy.³⁴⁵ For example, the Chinese law, through the use of tax incentives, encourages participants to invest in certain economically underdeveloped areas of the country.³⁴⁶

The Soviet and the Chinese laws have different restrictions on the amount of investment. While the Chinese law delineates a minimum level of investment,³⁴⁷ the Soviet law places a cap on the maximum amount of investment.³⁴⁸ The Soviet requirement that foreign partners provide less than 50 percent of the initial capitalization is reminiscent of early Yugoslav efforts to maintain control of joint venture projects.³⁴⁹ Although it might seem that the Soviet limitation would discourage investment, some scholars believe that the Yugoslav limitation did not deter investment.³⁵⁰

³⁴³ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 11. The exclusion does not apply to scientific research. The law permits joint ventures in certain social activities with the permission of the Federal Executive Council and republic authorities if the joint venture will help develop the social activity. Yugoslavia's federal law also regulates joint ventures in the area of banking. *See id.*

³⁴⁴ *See supra* notes 60–61, 230–32 and accompanying text.

³⁴⁵ *See supra* notes 56–57, 243 and accompanying text.

³⁴⁶ *See supra* note 302 and accompanying text.

³⁴⁷ *Chinese Joint Venture Law*, *supra* note 204, at art. 4.

³⁴⁸ *Soviet Joint Venture Law*, *supra* note 9, at 2. *But see supra* note 72.

³⁴⁹ *See id.*; Artisien & Buckley, *supra* note 115, at 535. Prior to the 1984 amendments, the Yugoslav government limited foreign capital to 49.9 percent of the total investment in an effort to ensure that worker self-management prevailed. The Yugoslavs lifted this limitation in 1984 to encourage western investment. Artisien & Buckley, *supra* note 115, at 535.

³⁵⁰ Artisien & Buckley, *supra* note 115, at 525–26. In a 1980–1981 survey of 42 multinational corporations that had joint ventures in Yugoslavia, Artisien and Buckley concluded that the host country's legal regime, not the socioeconomic framework of the country, was the major impediment to foreign investment growth. The survey showed that the minority holding requirement of the 1978 legislation did not deter multinational corporations from investing in Yugoslavia. The survey indicated

Removal of the investment cap in the Soviet law may be politically controversial since such an act could increase foreign control over areas of the Soviet economy. If competition for western investment continues, however, the Soviets, like the Yugoslavs, may decide that this provision is counterproductive. The experience of Yugoslavia, where foreign investors generally contribute 25 percent of total equity,³⁵¹ and China³⁵² may persuade the Soviets to amend this provision.

2. Property

The three joint venture laws deal with the issue of property similarly. The Chinese and Yugoslav laws, however, regulate property more rigorously than the Soviet law. All three laws permit foreign partners to invest resources in cash or in kind.³⁵³ The laws also permit foreign investors in the three countries to transfer or assign their shares of property in the joint venture to third parties.³⁵⁴

Differences in the laws exist in the provisions which govern the importation of equipment and materials. The Soviet law does not restrict contributions of materials or equipment,³⁵⁵ but the Chinese and Yugoslav laws stipulate that such contributions are permissible only if the material or equipment is unavailable in the host country at the appropriate price, quantity, and quality.³⁵⁶ The lack of restrictions in the Soviet law may influence western firms in their selection of Soviet Union organizations as joint venture partners.

3. Rights

The joint venture laws of these three countries also differ in the protection they give to the rights of foreign partners. The Yugoslav law, by delineating the rights of foreign partners, protects foreign investors more adequately than its Soviet counterpart. For example, article 2 of the Yugoslav law specifies that foreign persons in a joint venture share joint interests and risks; the law em-

that multinational corporations are willing to accept certain host country requirements such as the capital limitation. *Id.*

³⁵¹ See *supra* note 154 and accompanying text.

³⁵² Yuqing, *supra* note 206, at 79 n.57. In China, as of 1984, foreigners exercised majority control in only 9 percent of the 651 joint ventures. Chinese partners exercised majority control in 64 percent of the projects, while the partners contributed equal amounts of equity in 27 percent of the joint ventures. A foreign investor contributed 99 percent in one joint venture, and in some cases foreigners contributed less than 25 percent. *Id.*

³⁵³ See *Soviet Joint Venture Law*, *supra* note 9, at 2; *Yugoslav Joint Venture Law*, *supra* note 129, at art. 12; *Chinese Joint Venture Law*, *supra* note 204, at art. 5.

³⁵⁴ See *Soviet Joint Venture Law*, *supra* note 9, at 3; *Yugoslav Joint Venture Law*, *supra* note 129, at art. 36; *Chinese Joint Venture Law*, *supra* note 204, at art. 4.

³⁵⁵ *Soviet Joint Venture Law*, *supra* note 9, at 2.

³⁵⁶ See *Yugoslav Joint Venture Law*, *supra* note 129, at art. 12; *Chinese Joint Venture Regulations*, *supra* note 207, at art. 27.

phasizes, however, that as part of the right to share in income "the foreign person shall be entitled to the return of the value of resources invested and to compensation for the use of such resources."³⁵⁷ The Soviet law, on the other hand, only guarantees that, upon liquidation of the joint venture, the foreign partner shall gain the return of the remaining value of its investment after it repays obligations to the Soviet partners and other third partners.³⁵⁸ The Yugoslav law states that, as a general rule, investments by a foreign person shall be of a long-term nature.³⁵⁹ The Soviet law does not, however, discuss such time commitments.

The Chinese laws also protect a foreign partner's rights more explicitly than the Soviet law. For example, the Chinese have signed investment protection agreements with many nations.³⁶⁰ In addition, the basis for the joint venture law is in the Chinese Constitution.³⁶¹ In comparison, the Soviets have signed few investment protection agreements, and the lack of such agreements underscores a reluctance on the part of western firms to transfer capital to the Soviet Union.³⁶² Moreover, the Soviets enacted joint venture legislation in the form of a decree or edict.³⁶³ Western businesspersons claim that enactment of the legislation in the form of a law, rather than a decree, would indicate a long-term Soviet commitment to joint ventures.³⁶⁴

D. *Management and Labor*

Management of the joint venture is an important issue for western firms because it effects the quality of the joint venture's products. Some western firms fear that using a joint venture to produce goods may diminish their standards.³⁶⁵ Western firms which seek to maintain high standards in product quality should write preventive measures into their joint venture contracts.³⁶⁶ In the joint venture agreement, the firms should establish detailed standards for the enterprise's products.³⁶⁷ The firms should maintain the right to appoint a quality supervisor with the power to overrule the managing director on issues of

³⁵⁷ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 2.

³⁵⁸ *Soviet Joint Venture Law*, *supra* note 9, at 7.

³⁵⁹ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 3.

³⁶⁰ See Yuqing, *supra* note 206, at 65.

³⁶¹ See CHINESE CONSTITUTION, *supra* note 206, at art. 18.

³⁶² *West German Reservations Over USSR Joint Ventures*, BUS. E. EUR. 147 (Bus. Int'l ed. May 11, 1987) [hereinafter *West German Reservations*].

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Joint Venture Product Quality: Protect It in the Contract*, BUS. E. EUR. 219 (Bus. Int'l ed. July 13, 1987).

³⁶⁶ *Id.* at 220.

³⁶⁷ *Id.* "These standards should include detailed documentation and close review of technical processes." *Id.*

quality.³⁶⁸ The joint venture agreement may also obligate the joint venture to improve the quality of inferior products and define the extent of the joint venture's legal liability to third parties for inferior products.³⁶⁹ Foreign firms also should insist that suppliers compensate the joint enterprise for damages suffered as a result of poor quality supplies.³⁷⁰

A comparison of the Soviet, Yugoslav, and Chinese laws may indicate how the Soviet law will function with regard to product quality. One important difference in the laws is the method for selecting top management personnel. Unlike the Soviet law, in which both the chairman of the board and the general director of the joint venture are Soviet citizens,³⁷¹ the Chinese regulations allow the foreign partner to appoint the vice-chairman of the joint venture.³⁷² Many companies which conduct joint ventures in Eastern Europe, however, maintain that the choice of the general manager is a key factor as to whether the joint venture succeeds.³⁷³ Critics argue that the Soviets should allow the western company to indicate which Soviet citizen is acceptable.³⁷⁴ There is nothing in the Soviet Joint Venture Law that prohibits negotiation of this issue. Participants in Soviet joint ventures, however, need to address the conflict that arises between qualifications for managing an enterprise in a completely planned environment and qualifications needed to produce goods of sufficient quality to compete with western standards.³⁷⁵

All three laws provide for some form of a joint business board.³⁷⁶ Theoretically, this business board can serve to foster quality control of production. Some western firms believe, however, that the Soviet law does not deal sufficiently with management issues.³⁷⁷ For example, western business interests contend that management responsibilities should not be distributed solely on the basis of capital contribution, but rather should be determined based on the needs of

³⁶⁸ *Id.*

³⁶⁹ *Id.* The western partner should seek to eliminate the cause of substandard quality and also secure liability insurance. *Id.*

³⁷⁰ *Id.*

³⁷¹ *Soviet Joint Venture Law*, *supra* note 9, at 4.

³⁷² *Chinese Joint Venture Regulations*, *supra* note 207, at art. 34.

³⁷³ *Experience of Western Companies*, *supra* note 103, at X-6.

³⁷⁴ *Id.* One western company agreed to the following terms with the Soviet partners to choose a manager: "Ministry Y will provide a qualified work force from which a mixed commission of Ministry Y and (the Western company) will select the major part of the staff necessary for the functioning of the joint venture." It is possible, however, that none of the candidates will have the qualifications to manage the enterprise. *Id.* at X-6a.

³⁷⁵ *Id.* Moreover, western companies generally must pay high salaries to western businesspeople to induce them to accept positions in the Soviet Union; Soviet general managers may resent a large differential between the western managers' salaries and their own. *Id.*

³⁷⁶ See *Soviet Joint Venture Law*, *supra* note 9, at 3; *Yugoslav Joint Venture Law*, *supra* note 129, at art. 15; *Chinese Joint Venture Law*, *supra* note 204, at art. 33.

³⁷⁷ See *West German Reservations*, *supra* note 362, at 147.

the individual joint venture.³⁷⁸ In this respect, the Soviet and Chinese laws are similar since the Chinese regulations distribute board of director positions on the basis of capital contributions.³⁷⁹

The Yugoslav experience with the management of joint ventures may provide an instructive lesson for the Soviets. Yugoslavia amended the law in 1984 to delineate the autonomy of the joint management board and to ensure that the foreign partner's interests were represented on the board.³⁸⁰ Previously, the foreign partner's interests were informally represented in the joint venture,³⁸¹ but the system of worker self-management governed the management of the joint venture.³⁸² As discussed above in section III, the 1984 amendments stipulate that the foreign partner cannot have more representatives on the board than the Yugoslav organization, but issues that require mutual agreement are delineated in the joint venture contract.³⁸³ Moreover, foreign partners which invest less than 50 percent of equity can have an equal number of representatives on the board.³⁸⁴ The Soviets and the Chinese may be reluctant to adopt such practices because their joint ventures are limited liability companies in which profits, losses, and risks are shared on the basis of capital contribution.³⁸⁵

The Soviets, however, are not inflexible and have changed at least one management issue in the area of accounting.³⁸⁶ In its original form, the law required a joint enterprise to maintain books and statistical records according to established Soviet methods and prohibited the joint venture from providing any information to foreign states.³⁸⁷ The Soviets have agreed to permit a joint venture to keep a parallel set of books, both of which Soviet authorities will audit.³⁸⁸ This change permits western firms to merge joint venture projects into the entire company, and allows joint ventures to determine which currency to use in sales and purchase accounting.³⁸⁹ Thus, a Soviet joint venture will be able to switch between rubles and hard currency in pricing goods for local markets or export.³⁹⁰

There are differences in the Soviet, Chinese, and Yugoslav laws in the area of employee rights which reflect competition for western investment. The So-

³⁷⁸ *Id.*

³⁷⁹ *Chinese Joint Venture Regulations*, *supra* note 207, at art. 34.

³⁸⁰ Artisien & Buckley, *supra* note 115, at 535; see *Yugoslav Joint Venture Law*, *supra* note 129, at art. 15.

³⁸¹ Artisien & Buckley, *supra* note 115, at 535.

³⁸² Buzescu, *supra* note 308, at 428.

³⁸³ *Yugoslav Joint Venture Law*, *supra* note 129, at art. 16.

³⁸⁴ See *supra* note 177 and accompanying text.

³⁸⁵ See *Soviet Joint Venture Law*, *supra* note 9, at 5; *Chinese Joint Venture Law*, *supra* note 204, at art. 4.

³⁸⁶ *Soviets Introduce Broad Changes*, *supra* note 333, at 331.

³⁸⁷ See *id.*; *Soviet Joint Venture Law*, *supra* note 9, at 6-7.

³⁸⁸ *Soviets Introduce Broad Changes*, *supra* note 333, at 331.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

viets protect employee rights in accordance with Soviet law and require joint ventures to contribute to social insurance and pension funds.³⁹¹ The Chinese amendments in the October 1986 Provisions give management more power to discipline the work force than the earlier Chinese Joint Venture Law.³⁹² Under the Yugoslav law, the section which provides for formal representation of the foreign partner's interests on the management board also affects employee rights and worker self-management.³⁹³

E. *Conduct of Economic Activity*

The ability of joint venture partners to conduct economic activity efficiently influences the profitability of the joint enterprise in the same manner that issues of management and labor affect product quality. The laws of these countries deal with issues of supplies, profits, and taxation in ways which reflect each country's level of economic control and experience with foreign investment. All three countries have modified their laws in these areas to accommodate the needs of western investors. These modifications reflect a competition among socialist nations for western capital. Some of the changes in the Yugoslav law in the area of profit repatriation may serve as a model for the Soviet Union.

1. Supplies

In contrast to the limited discussion of supplies in the Soviet and Yugoslav Joint Venture Laws, the Chinese law deals with the issue extensively.³⁹⁴ An important difference in the three countries regarding the procurement of supplies is the result of centralized economic planning in China and the Soviet Union, in comparison to Yugoslavia.³⁹⁵ Although the Soviet law prohibits state interference in the western company's activity,³⁹⁶ the nature of a socialist economy can create problems in the procurement of supplies. In a centrally planned economy, joint ventures can purchase supplies on the international or domestic markets, but the domestic market is not a free market. The joint venture must obtain supplies based on a central planning organization's allocation.³⁹⁷ Thus, in the Soviet Union the joint venture must inevitably interact with purchasers

³⁹¹ See *supra* notes 93-95 and accompanying text.

³⁹² See *October 1986 Provisions*, *supra* note 276, at art. 15.

³⁹³ See *Yugoslav Joint Venture Law*, at arts. 15-17.

³⁹⁴ See *Chinese Joint Venture Law*, at art. 9; *Chinese Joint Venture Regulations*, at arts. 57-59; *October 1986 Provisions*, at arts. 13, 15.

³⁹⁵ See *Soviet Joint Venture Law*, *supra* note 9, at 4-5. For example, although Gosplan will not set production targets for a joint venture, the joint venture must rely on a centralized transportation system. *Id.* For the Chinese experience, see *supra* notes 281-86 and accompanying text.

³⁹⁶ *Soviet Joint Venture Law*, *supra* note 9, at 2.

³⁹⁷ *Experience of Western Companies*, *supra* note 373, at X-6.

and suppliers which receive planned production targets from Gosplan.³⁹⁸ In order to plan properly, joint ventures will need demand and production figures which the Soviets have not supplied previously.³⁹⁹

The Soviets may rely on the Chinese experience to resolve this problem. In the October 1986 Provisions, the Chinese made changes to deal with the problem of procuring supplies in a centralized economy. The changes ensure that joint ventures are able to purchase supplies on the domestic market without interference from central planning agencies.⁴⁰⁰

A comparison of the Soviet and Chinese laws reveals a common problem regarding the price of supplies purchased on the domestic market. When it is possible to buy supplies on the Soviet domestic market, they are often expensive because the Soviet Union sells some goods above world market prices.⁴⁰¹ The experience of western firms negotiating with Soviet partners is that the Soviets ignore, rather than resolve, this problem.⁴⁰² Some Soviet representatives have proposed that the State Committee for Foreign Economic Relations (GKES) conduct sales of Soviet materials to the joint enterprises.⁴⁰³ This solution, however, does not resolve the problem of price. If the Soviet Union insists on selling domestic market supplies to joint enterprises at world market prices, few western firms will be able to earn a profit.⁴⁰⁴

The Chinese have adopted one solution to this problem which may serve as a model for the Soviet Union. After the Chinese enacted the October 1986 Provisions, the Beijing municipal government adopted additional regulations to clarify specific problems in the national joint venture regulations and to encourage foreigners to invest in Beijing. The municipal government established an

³⁹⁸ Recent Developments, *supra* note 38, at 477.

³⁹⁹ *Id.*

⁴⁰⁰ See *supra* text accompanying notes 287-89.

⁴⁰¹ *Experience of Western Companies*, *supra* note 373, at X-6. For example, the Soviets sell energy on the domestic market below world market prices, but they sell energy to Comecon countries at above world market prices. Moreover, it is sold to the West only for hard currency. The joint venture law does not specify which price would apply to joint enterprises. *Id.*

⁴⁰² *Id.* A western company received the following proposal from the Soviet side on this issue:

The joint enterprise may make use of the services of sub-suppliers and, if necessary, may co-opt other companies and organizations into the enterprise. The joint venture enterprise will choose its own sub-suppliers preferably from within Ministry Y or other Soviet ministries and departments and from CMEA countries. Orders for the delivery of the remaining equipment (or for the provision of other types of service not obtainable on the markets listed above) including equipment or services obtainable in these markets, but not utilizable for technical reasons and/or because of unacceptable delivery periods, will be transferred to the firm for hard currency on competitive conditions.

Id. Thus, the proposal does not discuss a procedure to determine the price of supplies.

⁴⁰³ *Id.* GKES is the organization that deals with Soviet construction projects overseas. *Id.*

⁴⁰⁴ *Id.* In addition to high prices, an unmotivated labor force and the difficulty of transporting finished goods may impede the ability of western firms to earn a profit. Moreover, the joint venture law requires joint enterprises to pay all hard-currency expenses (including profits and money due to foreign shareholders or specialists) through receipts from exports. *Id.*

organization to sell materials to foreign joint ventures at the same prices that domestic state enterprises pay.⁴⁰⁵

China and the Soviet Union also have experienced similar problems because the renminbi and the ruble are not "hard" or convertible currencies. The Chinese law requires joint ventures to use their own foreign exchange to purchase goods on the international market.⁴⁰⁶ This provision can create problems because, unless it receives special permission, the joint venture is required to sell all products on the Chinese domestic market in nonconvertible renminbi.⁴⁰⁷

A similar provision in the original Soviet law required joint ventures to make sales and purchases on the Soviet market in nonconvertible rubles.⁴⁰⁸ Unlike the Chinese, however, the Soviets have attempted to resolve this problem. Soviet amendments to the law permit the joint venture and the Soviet enterprises to determine which currency to use for purchases and sales on the domestic market.⁴⁰⁹ Thus, the amendments allow a joint venture to secure hard currency from sales of products to Soviet enterprises; however, the amendments also force the joint venture to buy supplies from Soviet organizations in hard currency.⁴¹⁰

2. Profits

As noted in section II, Soviet joint venture legislation does not allow foreign partners to transfer abroad an unlimited amount of profits in hard currency.⁴¹¹ Socialist countries often limit the amount of hard currency profit transfers because these countries have nonconvertible currencies. The Soviet Union limits profit transfers in order to create a balance of hard currency equal to zero.⁴¹² A zero balance allows only an amount of hard currency profits for transfer equal to the hard currency surplus of exports over imports.⁴¹³ This requirement prevents western firms from creating joint ventures primarily to import products from the western firm's country.⁴¹⁴ This repatriation limitation, however, requires that the joint enterprise either generate a very high proportion of added value in the host country or export a large amount of products to hard

⁴⁰⁵ *Sweeteners*, *supra* note 336, at 158.

⁴⁰⁶ *Chinese Joint Venture Law*, *supra* note 204, at art. 9.

⁴⁰⁷ *Peking's Forex Rules Still May Not Be Answer to JV's Toughest Problem*, *BUS. CHINA* 17 (*Bus. Int'l Asia/Pacific Ltd.* ed. Feb. 10, 1986).

⁴⁰⁸ *Soviet Joint Venture Law*, *supra* note 9, at 4.

⁴⁰⁹ *Soviet Joint Venture Law Amendments*, *supra* note 10, at 5.

⁴¹⁰ *Policy Toward Joint Ventures*, 86 *DOING BUS. WITH E. EUR. USSR* X-3 (*Bus. Int'l ed.* 1988).

⁴¹¹ *See supra* note 103 and accompanying text.

⁴¹² *Experience of Western Companies*, *supra* note 373, at X-6a.

⁴¹³ *Id.*

⁴¹⁴ *Id.*

currency markets.⁴¹⁵ Critics note that only 5 percent of Soviet exports to western countries are in the form of finished products because the Soviet Union does not produce goods suitable for hard currency markets.⁴¹⁶ A western firm will be unable to transfer profits if it sells goods primarily on the Soviet market.⁴¹⁷

In comparison to the strict Soviet rule limiting profit transfers, Yugoslavia has amended the joint venture law to create new approaches to deal with this problem. The 1984 amendments to the Yugoslav law simplify and improve the profit provisions from the perspective of western investors.⁴¹⁸ Like the Soviet law, the earlier Yugoslav law made profit transfers dependent on the amount of hard currency the joint venture earned from exports.⁴¹⁹ Prior to the 1984 amendments, the law limited profit transfers to 50 percent of these hard currency funds and placed ceilings on profits.⁴²⁰ In July 1986, Yugoslavia removed these limitations. The amendments offer greater protection to foreign investors because they prevent arbitrary changes in the proportion of a foreigner's share of income stipulated in the joint venture contract.⁴²¹

In addition, in 1986 the government amended the law in ways which make Yugoslavia a more attractive candidate for joint ventures than the Soviet Union or China. One amendment permits foreigners to transfer Yugoslav dinars abroad,⁴²² a provision which does not exist for investors with Soviet ruble or Chinese renminbi profits. The transfer of dinars has limited practical value because the dinar is nonconvertible.⁴²³ Business sources, however, characterize the provision as unique because it allows the resale of dinars to western banks (although at a reduced value to the investor) and may lead to conversion of the dinar into a convertible currency.⁴²⁴ The creation of a convertible currency in any of these three countries would increase the competition among them for foreign investment.

3. Taxation

In the area of taxation of joint ventures, the Soviet and Chinese laws provide more specific tax incentives to foreign investors than the Yugoslav law. The competition for foreign investment is evident in the pressure on host countries to create attractive tax policies. The tax policy in the Soviet law resembles the

⁴¹⁵ *Id.* at X-6a-X-6b.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Government Policy—Yugoslavia*, *supra* note 123, at X-5.

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.* at X-6.

⁴²³ *Id.*

⁴²⁴ *Id.*

Chinese policy with respect to tax holidays during the the first two years of operation.⁴²⁵ A noticeable difference between the original Soviet law and the Chinese law was that the latter provided for exemption from taxation during the first two *profitable* years.⁴²⁶ The Soviets, however, have clarified this issue and now calculate the tax holiday from the date the joint venture earns a profit; the original law calculated the tax holiday from the date of registration.⁴²⁷

There are also differences in the Chinese and Soviet laws in the supplemental tax on profits remitted abroad. The Soviet law imposes an additional 20 percent tax on such profits,⁴²⁸ while the Chinese law requires a payment of 10 percent.⁴²⁹ The Soviets, however, seem to be sensitive to the competition for foreign investment, and have indicated that they will consider alternative arrangements in this area.⁴³⁰ In terms of tax flexibility, the Yugoslav law offers foreigners the ability to negotiate with each republic individually.⁴³¹

VI. CONCLUSION

The Soviet Union's recent enactment of joint venture legislation ends a long era of opposition to foreign investment in that country. Although it is still too early to judge the effectiveness of the law, a comparison of the Soviet legislation to comparable laws in Yugoslavia and China reveals similarities and differences between them. One factor which may account for some of the discrepancies between the three laws is the difference in the degree of centralization in the Soviet and Chinese economies in comparison to the Yugoslav economy.

The two nations which have a long experience with joint ventures, Yugoslavia and China, exhibit a general trend to modify their laws to accommodate western investors. The Soviet Union, however, also has demonstrated some flexibility in individual joint venture negotiations. Moreover, the September 1987 amendments to the Soviet joint venture law are additional evidence that the Soviets want to create an environment conducive to western investment. Analysis of subsequent joint venture regulations is necessary to determine whether the Soviets will compete further with other socialist nations for western capital.

Richard Mirabito

⁴²⁵ See *supra* notes 105, 301 and accompanying text.

⁴²⁶ See *supra* note 301 and accompanying text.

⁴²⁷ *Soviet Joint Venture Law Amendments*, *supra* note 10, at 6; *Soviets Introduce Broad Changes*, *supra* note 333, at 331.

⁴²⁸ See *supra* text accompanying note 107.

⁴²⁹ See *supra* text accompanying note 298.

⁴³⁰ For example, in a joint venture between Finnair of Finland and the Soviet tourist department to renovate a hotel in Moscow, the Soviets agreed to discuss additional tax holidays in response to Finnish complaints about the double taxation on profits. *Finnair, Soviets Reach JV Agreement*, BUS. E. EUR. 220 (Bus. Int'l ed. July 13, 1987).

⁴³¹ See *supra* note 196 and accompanying text.