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Glasnost: Joint Ventures Now Permitted in the Soviet Union

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GLASNOST: JOINT VENTURES NOW PERMITTED IN THE SOVIET UNION

I. INTRODUCTION*

In the past, cooperation agreements and licensing agreements have been the main forms of East-West trade with the Union of Soviet Socialist Republics (USSR).[1] However, as in other Eastern European

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*Since the completion of this article the Soviets have amended and clarified a few of the provisions of the January 1987 joint venture legislation. These October 1987 amendments are discussed in the epilogue of this article.

1. *See Scriven, Co-Operation in East-West Trade: The Equity Joint Venture*, 10 INT'L BUS. LAW. 105, 106 (1982) (Scriven describes three forms of East-West trade with Eastern European countries, cooperation agreements, licensing agreements and joint ventures. Until January 1, 1987, only the first two forms were legal in the Soviet Union.).

countries,[2] increasing economic problems have forced the Soviets to re-evaluate the way they conduct economic foreign relations.[3] In January, 1987, the Soviets announced that they will permit another mode of trade, the joint venture.

Prior to January, 1987, joint ventures were not permitted in the USSR.[4] The Soviet Constitution states that no means of production may be privately owned.[5] The introduction of joint ventures with capitalist and developing countries on the territory of the USSR now permits foreign investors to have a private ownership interest in the means of production.[6]

A joint venture is a legal entity formed when two or more parties come together to engage in business for mutual profit.[7] The parties own both a profit interest and a capital interest. Ownership is usually in proportion to the amount of capital contribution to the venture.[8] Joint venture features such as joint investment, joint management, sharing of risks, and repatriation of profits permit the parties involved to have ownership interests in the venture.[9]

The Soviets are now allowing joint ventures because their inability to compete in the world market due to outdated technology and lack of know-how is causing trade deficits with the West.[10] The Soviets

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2. Scriven, *Joint Venture Legislation in Eastern Europe: A Practical Guide*, 21 HARV. INT'L L. REV. 633 (1980).

3. *See generally USSR Forced to Cut Imports, Impose CT*, XV BUS. E. EUROPE 217-218 (July 1986).

4. *Soviets Vague on New Forms of Cooperation*, XV BUS. E. EUROPE 42 (February 1986) ("Soviet ideologues still object to the main features of conventional joint ventures - joint investment, joint management, sharing of risk and repatriation of profits.").

5. *USSR Const.* art. 4 provides:

> The economic foundation of the USSR is the socialist system of economy and the socialist ownership of the instruments and means of production, firmly established as a result of abolishing the capitalist system of economy, the private ownership of the instruments and means of production, and the exploitation of man by man.

6. R. Duane Hall, Ph.D., *The International Joint Venture*, 79 (1984).

7. Campbell & Miller, *Legal Aspects of Joint Ventures in Eastern Europe* 1 (1981); *See generally* Friedmann & Kalnunoff, *Joint International Business Ventures* (1961).

8. *See generally* Scriven, *supra* note 1, at 105-06.

9. Hall, *supra* note 6; *See also Soviets Vague*, *supra* note 4, at 42.

10. *See generally Sales Outlook Better to USSR Engineering*, XV BUS. E. EUROPE 329-30 (Oct. 1986).

buy a large quantity of finished manufactured goods from the West. However, they are unable to sell the few, poor-quality, finished manufactured goods which the Soviet industries produce. Presently, less than five percent of Soviet exports to the West are manufactured goods.[11]

The main Soviet exports are crude oil, fuels and raw materials.[12] Before the fall of oil prices, these items accounted for over 85 percent of Soviet exports to the West.[13] Overdependence on the world market prices of these few goods has had a detrimental effect on the Soviet economy. As a result, falling prices of oil, gas, and raw materials in recent years have been causing severe hard currency shortages in the USSR.[14] In 1986, falling oil prices resulted in a seven billion dollar loss of export income to the Soviets.[15] This loss would have cut the Soviet import power from the West by about one-third.[16] However, the Soviets were able to make up most of that seven billion dollar loss by drastically cutting back grain imports in 1986.[17]

The hard currency problem is further compounded by the devaluation of the dollar.[18] The Soviets bill their main exports in dollars.[19] The Soviets not only have fewer dollars but the dollars they have are worth less. Without competitive goods or hard currency, the Soviets are unable to obtain the Western know-how and technology needed to modernize their industry. The Soviets need to modernize their industry so they can produce quality goods that can be sold in the world market which in turn will help the Soviets with their balance of trade.[20]

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11. Materials from the Business International Conference, *Business and Countertrade with the Soviet Union and Eastern Europe Under New Conditions*, 39 (Mar. 4-6, 1987)(available in the University of Florida Law School Library); Interview with Michael W. Gordon Professor of Law at the University of Florida College of Law, in Gainesville (Sept. 1987)(Soviet economic priorities under the Soviet National Economic Plan also effect the percentage of Soviet manufactured goods available for export. Military and capital goods production have priority in the distribution of available resources over the production of manufactured goods for sale or export.)

12. *Soviet Foreign Trade Shakeup Continued*, XV Bus. E. Europe 289 (Sept. 1986).

13. *Id.*

14. *EE Trade Prospects: Dim for Next Two Years*, XV Bus E. Europe 273 (Sept. 1986).

15. *Id.*

16. *Id.*

17. *USSR Forced to Cut Imports, Impose CT*, *supra* note 3.

18. *EE Trade Prospects*, *supra* note 14.

19. *Id.*

20. *Chernobyl: Cloud Over Soviet Western Trade?* XV Bus. E. Europe 145 (May 1986) (The current Soviet trade strategy is to "save hard currency and buy Western machinery, equipment and know-how to modernize [their] industry.").

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In order to remedy these economic problems, the Soviets implemented joint venture legislation effective as of January 1, 1987.[21] The Soviet legislation was adopted by the USSR Council of Ministers on January 13, 1987, by resolution,[22] published in a ECOTACC special report of January 19, 1987,[23] and released to the general public in Pravda on January 27, 1987.[24]

The Soviets believe joint ventures will modernize their industries by allowing foreign investors to contribute, as part of their initial investment, the Western capital goods, technology, and know-how needed for the venture.[25] This plan permits receipt of benefits by Soviet industry without a corresponding cost in hard currency. The Western goods, technology and know-how contributed by the foreign investor and the parties' mutual interest in making profits would hopefully produce goods able to compete in the world market. Thus, the Soviet export base would expand, generating hard currency to finance further imports of Western capital goods, technology and know-how, which would strengthen the Soviet economy.[26]

In addition, the Soviets may not be the only ones to benefit by implementation of joint ventures in the USSR. Joint ventures also have advantages for the foreign investor.[27] In a joint venture, foreign investors will be directly involved in the business' daily operations thereby affording better protection of their investment and marketing networks.[28] The foreign investor will have better quality control over

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21. *ECOTACC, Joint Enterprises with Firms of Capitalist and Developing Countries, Reform of Soviet Foreign Economic Relations* 22 (special issue, Jan. 19, 1987) (The ECOTACC report provides the legislative framework up on which Soviet joint ventures will be based.); *US-USSR Trade Council Meets: Much Ado*, XVI BUS. E. EUROPE 4 (January 5, 1987) [*US-USSR Trade Council*].

22. *Id.*

23. *Id.*

24. Pravda, January 27, 1987, at 2, col. 1.

25. *See* Buzescu, *Joint-Ventures in Eastern Europe*, 32 AM. J. COMP. L. 407, 413 (1984) (The motives of other Eastern European countries in allowing joint ventures also apply to the Soviets. These motives are to modernize and accelerate economic development.); *see generally* Pattison & Klingenberg, *Soviet Announcement Should Stir Interest in U.S. Corporations*, Legal Times, March 2, 1987, at 12, col. 1. *See also* note 21.

26. *See US-USSR Trade Council*, *supra* note 21, at 4 (The Soviets want to change their export base, "by being able to export more manufactured goods." A broad export base is necessary to prevent the drastic decrease in the supply of hard currency caused when the price of one export good falls.).

27. *See generally* Buzescu, *supra* note 25, at 410-12; *see also* Scriven, *supra* note 2; Scriven, *supra* note 8.

28. *See* sources cited *supra* note 27.

the goods produced and the benefits of capital appreciation and of operation outside the national economic plan.[29] In a joint venture, profits are based on the success of the venture and not on a set price as in most cooperation or licensing agreements.[30] Finally, the possibility of additional import and export business developing from a good working relation with the Soviets may attract foreign investors into these joint ventures.[31] Eastern Europe is considered one of the world's largest potential markets, with vast untapped resources in the areas of agriculture, modern technology, services and consumer goods.[32] Potential access for sales to local markets will be very attractive to foreign investors.[33]

Many United States companies and other foreign companies have expressed interest in joint ventures in the Soviet Union. For example, Monsanto,[34] and Occidental Petroleum Corporation,[35] have already signed letters of intent to enter into such joint ventures. Also, Pepsico Inc. is negotiating to open 100 Pizza Hut restaurants in the USSR.[36]

II. Soviet Joint Venture Legislation

Joint venture laws are usually general in nature, allowing the parties greater flexibility in shaping the joint venture to accommodate their respective needs.[37] Flexibility also helps alleviate problems caused when capitalist and socialist economies interact.[38] The joint venture laws of the Eastern European countries presently hosting joint ventures are different in detail. However, these laws have a number of common features.[39] These features are also found in the Soviet legislation.

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29. *Id.*
30. *Id.*
31. *Id.*
32. Buzescu, *supra* note 25, at 407. *See also* Keller, *Does Moscow Mean it This Time?*, N. Y. Times, Jan. 18, 1987, § 3 at 4, col 4 (Access to the 280 million Soviet consumers is appealing to Western investors.).
33. Scriven, *supra* note 2, at 653.
34. Rasky, *4 Concerns in Soviet Joint Ventures*, N.Y. Times, Dec. 11, 1986 at 38(N), col. 1.
35. Farnsworth, *15 U.S.-Soviet Deals Proposed*, N.Y. Times, Oct. 24, 1986 at D20(L), col. 1.
36. Horowitz, *U.S.-Soviet Projects Near; Up to 40 Ventures Could be Signed Within Year*, J. Com. & Com., Nov. 19, 1986 at 5A, col. 1.
37. J. Walmsley, *Handbook of International Joint Ventures* 5 (1982).
38. Scriven, *supra* note 2, at 635.
39. Scriven, *supra* note 1, at 106.

III. Formation of the Joint Venture

Based on the historical experience of other Eastern European countries permitting joint ventures,[40] three approaches have been used to create a legal framework in which joint ventures can be formed in a socio-economic system.[41] The foreign investor may invest in an existing legal entity strictly controlled by the existing economic system. This approach excludes the possibility of Western forms of organization.[42] Under the second approach, the Eastern European country can resurrect and amend pre-socialist legislation on corporate law and business associations. The amendments reform the legislation so that the structure of the joint venture resembles Western models of business associations.[43] Lastly, the Eastern European country can adopt new legislation based on Western models of business associations.[44] The Soviets have adopted the third approach as indicated in the Soviet legislation.[45] The adoption of Western models of business association alleviates some of the fears foreign investors have about entering into a joint venture proscribed by unfamiliar socialist laws. Foreign investors understandably will feel more secure when working within a recognizable legal framework.[46]

IV. Management

In the majority of Eastern European countries involved in joint ventures, the organizational structures resemble Western models composed of shareholders (the parties holding an ownership interest in the joint venture), directors, and officers.[47] Usually, the chairman of

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40. Buzescu, *supra* note 25, at 408 (Bulgaria, Hungary, Romania, Poland and Yugoslavia allow joint ventures). *See also Joint Ventures in EE: Is Everybody Ready?*, XV BUS. E. EUROPE 321 (October 1986) (Czechoslovakia recently signed documents for the first joint venture in Czechoslovakia).

41. Buzescu, *supra* note 25, at 415.

42. *Id.* (Yugoslavia practices this method. Yugoslavia's economy runs on a self management system which is different from the other Eastern European countries engaging in joint ventures).

43. *Id.* at 416 (Rumania, Hungary and Poland resurrected and amended pre-socialist legislation).

44. *Id.* at 417 (Bulgaria enacted new legislation with an eye toward Western models of business organization).

45. *See generally US-USSR Trade Council, supra* note 21; *see also ECOTACC, supra* note 21, at 22, 24 (The Soviet proposal provides for a charter to be adopted by the parties participating in the joint venture, similar to corporate articles of incorporation. The proposal also assumes an organization with share holders, directors, and officers.).

46. Scriven, *supra* note 1, at 107 (However, dispute resolution will most likely be resolved under Soviet laws or through arbitration set out in the joint venture's founding documents.).

47. *See generally* Buzescu, *supra* note 25, at 427-428; *see also*, Seriven, *supra* note 2, at 638-639.

the board of directors and the chief officers are citizens of the host country.[48] The Soviet legislation assumes the same structure.[49]

An administrative board consisting of people selected by the partners of the joint venture will oversee the general management of the venture.[50] The chairman of the board must be a Soviet citizen.[51] This board is very similar to a corporate board of directors in the United States with basically the same powers and duties.

Day-to-day operations of the venture will be governed by a directorate composed of both Soviet and foreign citizens.[52] The Soviet legislation does not indicate how the members of the directorate are to be chosen, but it does say that the director general must be a Soviet citizen.[53] The directorate members will have powers and duties similar to those of corporate officers in the United States.

There will be a Charter[54] which will be a combination statement of corporate law, articles of incorporation, and by-laws. What is not covered in the Charter will be picked up in the venture's founding documents, i.e. the joint venture contract. The joint venture participants must approve the Charter.[55] The Charter will include items such as the subject and objectives of the venture, the participants, the amount of ownership capital, the structure of the management bodies, and decisionmaking procedures.[56]

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48. *Id.*

49. *ECOTACC*, *supra* note 21, at 24

> The supreme management body of a joint enterprise is the board made up of people appointed by its participants. The control over every day activites of a joint enterprise is exercised by the management with the director general at the head who is appointed by the board. The chairman of the board and the director general are citizens of the USSR.

50. *Id.* (The number of board members each party of the joint venture may choose will probably be based upon the percentage of ownership interest held by each party. In which case, the Soviets will always have a majority. *See* note 81.)

51. *Id.*

52. *Id.* (The number of directors each party may choose for the directorate will probably be in proportion to the number of board members they get to choose in which case the Soviets will always have a majority in the directorate. *See* note 50.)

53. Pravda, *supra* note 24, col. 6-7.

54. *ECOTACC*, *supra* note 21, at 22.

55. *Id.*

56. *Id.* (In the United States the subject and objectives of a corporation are no longer of great significance in the articles of incorporation. The participants i.e. the shareholders are not listed in the by-laws or articles of incorporation of a U.S. corporation. Further the amount of ownership capital of each shareholder is not listed in United States Corporation by-laws or articles of incorporation.).

The method of decision making is usually negotiated and incorporated into the joint venture's founding documents.[57] The typical Eastern European method of decision making in joint ventures has been to require a unanimous vote by the board before an action is taken.[58] This gives the minority shareholder (i.e., the foreign investor) a veto. This veto insures that the minority shareholder has a voice in the venture's activities.[59]

One of the foreign investor's main conditions for entering a joint venture is participation in management to protect their investments.[60] Also their expectation of active participation in management would be eliminated if their voice carried no weight in the decision making process. This would be a disincentive for foreign investors to enter into joint ventures. The Soviet legislation does not indicate a method of decision making. However, the Soviets will probably adopt the above method for the reasons stated as have other Eastern European countries.

V. WORK FORCE

A major problem that has always plagued foreign investors investing in centrally-controlled economies has been control and motivation of the local work force.[61] The ability to hire and fire workers to improve productivity should be carefully laid out in the venture's founding documents. A centrally-controlled economic system strives for the goals of the State, not for profit of the private individual. There is little motivation for workers to do good work when everything is done for the good of the State and only poor quality goods are available on which to spend income.

A joint venture is a profit-oriented enterprise.[62] An immediate conflict arises when profit-oriented modes of business are imposed on a State oriented work force. A popular form of control which has been acceptable to foreign investors in the past has been the creation of a

57. *Id.* (The order of the board's decisionmaking is stipulated by founding documents.).

58. Buzescu, *supra* note 25, at 427-29; *see also Controlling the Joint Venture Without a Majority Share*, XVI BUS. E. EUROPE 243 (Aug. 1987).

59. *Id.*

60. Campbell & Miller, *supra* note 7, at 7; *see also generally*, Gordon, *The Developing Law of Joint Ventures in Eastern Europe*, 9 TEXAS INT'L L. REV. 281, 285 (1974).

61. Legal Times, *supra* note 25, at 13, col. 1.; *See also* Materials from the Business International Seminar, *Joint Ventures in the Soviet Union and Eastern Europe: New Opportunities and Pitfalls* 27 (Mar. 30-Apr. 1, 1987) (available in the University of Florida Law School Library).

62. *Id.*

"flexible system of incentive and disciplinary powers."[63] By providing workers with opportunities for personal gain, job promotions and demotions based on merit, bonuses for good work, and pay cuts for bad work, the work force is forced to operate in a profit-oriented mode.

However, the above method still leaves the problems of eliminating bad officers, directors, and workers unresolved. The Soviet officers and directors, even though chosen by the participants of the venture, are selected from a group of candidates provided by the Soviet participants. A group is only as good as the people in it. Since important positions in the Soviet Union are usually filled with political appointees, each person in the group of possible candidates provided by Soviets may not be properly qualified to do the job.[64] Additionally, it is fine to have a system of incentive and disciplinary powers, but if one cannot execute the ultimate discipline to fire a bad worker, the workers will know no matter what happens they will still have a job and still get paid.[65] This does not aid the management's attempts to induce the workers to do good work.

The success of a joint venture on Soviet soil can be greatly affected by how flexible the Soviets are when negotiating the personnel provisions of the founding documents. The idea of a profit motivated work force will be resisted by the Soviets, but the Soviets are already allowing the creation of joint ventures which are profit-oriented enterprises. The joint ventures will have to work out collective bargaining agreements with the Soviet workers' unions,[66] but who will have actual control of the work force remains to be seen.

The Soviet legislation does not provide any terms for control and motivation of the work force, but it does provide some other general terms. The majority of the work force will consist of Soviet citizens.[67] In addition, wage rates, work hours, vacation time, social security, and insurance will be paid according to Soviet law.[68]

The Soviet legislation also states that only a limited number of highly skilled specialized foreign workers will be invited to work in the Soviet Union.[69] Foreign workers will negotiate their own salaries,

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63. *Id.* col. 2.

64. Business International Seminar, *supra* note 61, at 27; *see also* Business International Conference, *supra* note 11, at 39.

65. Interview with Michael W. Gordon, Professor of Law at the University of Florida College of Law, in Gainesville, (Sept. 1987).

66. Legal Times, *supra* note 25, col. 1.

67. *ECOTACC*, *supra* note 21, at 25.

68. *Id.* at 25-26.

69. *Id.*

leaves, and deductions, but they are subject to Soviet income tax and deductions to insurance and social security funds.[70] Contributions to pension fund from a foreign worker's income will be transferred into the currency of the country of the foreign worker's permanent residence.[71] The joint venture will pay the foreign workers in rubles, but they can repatriate any income not spent in the Soviet Union.[72]

The repatriation of a foreign worker's income not spent in the Soviet Union may be a problem even though included in the Soviet legislation.[73] The Soviets may require that the necessary hard currency come out of the joint venture's hard currency account.[74] The foreign participants in the venture may object to this because it would reduce the amount of hard currency available for repatriation of profits. Repatriation of income may also depend on the access priority given to exchange of income for hard currency by the Soviet banks.[75] If available hard currency is already allocated to Soviet projects with higher access priority, the foreign worker may be stuck with rubles which are not allowed out of the USSR. A foreign worker, when negotiating to work in the Soviet Union, should take this into consideration and include in the work contract a viable source of hard currency for the repatriation of income not spent in the USSR.

The Soviets are only allowing a limited number of foreign workers to enter, in order to avoid dissension among the Soviet workers. The Soviets will have to offer foreign workers high salaries and many privileges to attract them to jobs in the USSR. A large foreign work force would also take jobs from the Soviet workers.

The necessity of high salaries to draw foreign workers to the venture would increase the overhead cost of the running of the venture. Further, if the foreign participants withdraw and a large foreign work force left with them, the Soviets might not be able to operate the venture on their own. Therefore, the participation of foreign workers in the actual production of the venture's product will probably be kept at a minimum.

VI. Property Rights

Eastern European nations historically have dealt with the ownership and disposition of property for joint ventures in two ways.[76]

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70. *Id.*
71. *Id.* at 26.
72. *Id.*
73. Interview with Michael W. Gordon, *supra* note 65.
74. *Id.*
75. *Id.*
76. *See* Buzescu, *supra* note 25, at 417.

Either the joint venture receives all property rights or the parties retain rights over assets contributed.[77] The Soviets chose to give the joint venture all property rights.[78] This choice is consistent with the express intent of the Soviets to make joint ventures limited liability entities.[79] The partners' transactions will be kept separate from those of the joint venture. The Soviet legislation states that a joint venture is liable "with all the assets that belong to it."[80] The partners in the joint venture are not liable for the obligations of the joint venture and vice versa. Foreign investors will not be able to write off losses as in a partnership.

Further, by giving the joint venture entity, a creature of Soviet law, all the property rights over the venture's assets, the Soviets can insure that non-cash contributions of Western technology, know-how, and goods will remain in the USSR if a venture fails or a partner withdraws. Copyrights and patents will be protected in accordance with Soviet laws.[81] In addition the Soviet legislation indicates that if a joint venture fails, or the foreign partner withdraws, the foreign partner will receive the residual value of whatever interest the foreign investor has left in money or goods.[82] Goods presumably refers to products produced by the joint venture, not Western goods, technology and know-how brought in to serve as part of the foreign investor's initial capital investment. It is unlikely that once the technology and know-how have come into the USSR that the Soviet government will let it out.

VII. Ownership Capital

In Eastern Europe, the foreign investor's share initially could not exceed forty-nine percent of ownership capital.[83] Some of these countries have created exceptions allowing the foreign investor a majority share in certain businesses.[84] The Soviets, however, have retained this

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77. *Id.*

78. *See generally ECOTACC*, *supra* note 21, at 23 ("The Soviets proposed framework appears to create a limited liability organization. The Soviet proposal in terms of property rights of a joint venture's liability to the extent of its assets.").

79. Pravda, *supra* note 24, col. 6.

80. *Id.*

81. *ECOTACC*, *supra* note 21, at 23.

82. Pravda, *supra* note 24, at 3, col. 2.

83. Buzescu, *supra* note 25, at 421.

84. *Id.*

restriction.[85] The legislation does not indicate that this percentage is negotiable.

The purpose for this restriction goes back to the aversion of the Soviet socio-economic system to private ownership of the means of production.[86] The Soviets are reluctant to give up control. Soviet majority ownership, however, is really not necessary in light of other restrictions enumerated in the Soviet legislation. If the foreign investor wants to sell its shares and withdraw from the joint venture, the Soviets have a first-buy option, and the seller must get permission to sell from the State Foreign Economic Commission of the USSR Council of Ministers.[87] For the joint venture to conduct business, it must apply for import and export permits with the appropriate Soviet agencies.[88] By deciding that the venture's activities are not in line with the objectives and tasks envisaged by the founding documents, the USSR Council of Ministers may liquidate the business.[89] These three provisions provide the Soviets with the leverage to control the activities of the joint venture, even if the Soviets did not have majority ownership. The Soviets will have to be careful when using these provisions. Indeed the possibility of use may keep initial investors out. Indiscriminate use of these control mechanisms will certainly drive potential investors away.

VIII. Capital Contribution

Following the the lead of all the Eastern European countries presently hosting joint ventures,[90] the Soviets will allow the capital con-

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85. *ECOTACC*, *supra* note 21, at 22 ("The share of the Soviet side in the ownership capital of the joint enterprise should be no less than 51 per cent.").

86. *Soviets Vague*, *supra* note 4.

87. *ECOTACC*, *supra* note 21, at 23. "Participants in a joint enterprise have the right to give fully or partially, by mutual agreement, their shares in the enterprise to third persons. In each separate case the turning over of the share is done with the permission of the USSR Council of Ministers. Soviet participants have a preferential right to acquiring the shares of the foreign participants."

88. *Id.* at 24. "The export from the USSR and the import to the USSR by a joint enterprise of goods and other property are carried out in accordance with permits issued in accordance with the procedure established by Soviet legislation." (It is unclear, however, whether the term "Soviet legislation" refers to the new legislation being worked on for joint ventures or to already existing Soviet legislation).

89. *Id.* at 26. (A joint venture can be liquidated . . . by a decision of the USSR Council of Ministers if its activities do not fall in line with the objectives and tasks envisaged by the [founding] documents.").

90. Buzescu, *supra* note 25, at 422 (Capital contribution may be) - cash - tangible assets like equipment, spare parts, materials, buildings real estate - intangible assets like know-how, patents, licenses, and services.

tribution to be in almost any form: goods, equipment, technology, know-how, and cash.[91] This provides the best method for the Soviet Union and Eastern European countries to obtain Western goods and technology in light of hard currency shortages.[92] The value of the contributed non-cash assets will be determined "with due account for prices in the world market."[93] All Eastern European countries except Poland use this method.[94] The determination of what is meant by the phrase "due account for prices in the world market" will have to be defined in the founding documents of the joint venture. The founding documents should specify the process of valuation for both the foreign contributions and the Soviet contributions to the venture. This will allow all the participants to formulate reasonable expectations as to their percentage of ownership interest in the venture.

A potential problem regarding contributions of Western technology and know-how is the existence of Western government bans on the transfer of technology and know-how to Eastern Europe.[95] These bans may prevent the development of certain types of joint ventures on Soviet soil. The Soviets have expressed concern over the possible effect of these bans on joint ventures in the Soviet Union and have stated several times that they would like to see these bans lifted.[96]

IX. SUPPLIES

In Eastern Europe, the relationship between a joint venture and the national economic plan of the host country is of critical importance.[97] If a venture is tied to the national economic plan, all supplies

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91. *ECOTACC*, *supra* note 21, at 23. "[Ownership capital] Contribution[s] can be made in the form of buildings, structures, equipment, and all other material values, the right to use land, water and other natural resources, buildings, structures, equipment, as well as other property rights (including those for the use of inventions know-how, etc.), monetary funds in rubles and in foreign currency."

92. Buzescu, *supra* note 25, at 417.

93. *ECOTACC*, *supra* note 21, at 23. "The contribution made by the participants to the ownership capital is valued in rubles according to the official currency exchange rates of the USSR State Bank on the day when the contribution is made at the agreed upon prices with due account for the prices on the world market." *See epilogue* October 1987 Amendments (The Soviets are beginning to clarify the valuation process).

94. Buzescu, *supra* note 25, at 417 ("Poland requires valuation of non-cash assets in zlotys by an outside expert.").

95. *See generally* Kempe, *Moscow Easing Laws Governing Foreign Trade*, Wall St. J., Sept. 12, 1986, at 37(E), col. 1; *see also US May Shortly Release Oil Techonology to USSR*, XVI, BUS. E. EUROPE 9-10 (Jan. 1987).

96. *Id.*

97. Business Internatioanl Seminar, *supra* note 61 at 20. *See generally* Campbell & Miller, *supra* note 7.

must be obtained through the state's planning bureaucracy and the state sets the venture's economic plans and goals. The economic planning bureaucracy would be in control of the venture's production. While foreign investors expect to have some influence over the venture's production, they would have little or no influence if the venture is controlled by the state's national economic plan.

A venture that operates outside of the host countries national economic plan is to a certain extent freed from interference from the host country's planning bureaucracy.[98] There is still the problem, however, of obtaining supplies from within the host country. The venture would still have to rely on the host country's planning bureaucracy to allocate to the venture the resources necessary for the venture's operation.[99] Importation of all necessary supplies is not practical. A planned economy is inflexible and cannot adjust to consumer demands as can a market economy.[100] Once the planning bureaucracy has allocated the available resources, it is very difficult to alter its plan. The ability to import needed supplies to supplement supply allotments granted by the state's planning bureaucracy could have a large impact on the success of the venture and should be carefully outlined in the venture's founding documents.

It is also important that the method of pricing supplies from the host country be incorporated into the ventures founding documents.[101] Local sources of inexpensive supplies are an incentive to foreign investors to participate in a joint venture. However, if a pricing structure is not set forth in the venture's charter or related documents, supply prices may increase making the initially inexpensive supplies not so inexpensive.

The Soviet legislation indicates that joint ventures in the USSR will not be subject to the Soviet national plan.[102] A venture will be able to set its own economic plans and goals but, as discussed above, will have to deal with the state economic planning bureaucracy in order to obtain necessary allotments of available Soviet resources. Transportation of these supplies and all other venture cargo will be via the existing Soviet transport network.[103]

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98. *Id.* at 26.
99. Business International Conference, *supra* note 11, at 38.
100. *Id.*
101. Business International Seminar, *supra* note 93.
102. *ECOTACC*, *supra* note 21, at 23.
103. *Id.* at 25.

Supply prices will be determined "with due account for world prices".[104] Supplies may vary in price depending on the final negotiated definition of "with due account for world prices". The joint venture should incorporate these definitions in the joint venture's charter or related documents.

An additional factor to consider is that the Soviet Union is a land-locked country with a tightly controlled means of transportation.[105] As a result, it will be difficult to transport, import, and export supplies. Thus, the Soviets need to set up new transportation networks for ventures within the USSR and improve existing import and export facilities[106] to attract foreign investors to ventures in the USSR.

X. PROFITS AND CURRENCY EXCHANGE

Profits and currency exchange are two of the most important aspects of a joint venture to a foreign investor.[107] The repatriation of profits may encompass both. The details of how profits are to be repatriated are usually negotiated and explained in the founding documents of the joint venture. Generally, in Eastern Europe, repatriation of profits is limited to the amount of hard currency available in the joint ventures hard currency account.[108] The only way to increase the balance of the hard currency account is through exporting products of the joint venture.[109] This is known as the zero balance of hard currency requirement.[110]

The Soviets have chosen a similar method. The Soviet legislation guarantees the right to repatriate profits, but all hard currency payments which a joint venture owes to its foreign participants may only be made at the expense of revenues collected from the export of the joint venture's product to hard currency markets.[111] This ceiling for the repatriation of profits protects the Soviets from further decreases

104. *Id.* at 24.

105. Business International Seminar, *supra* note 61, at 28.

106. The Soviets have a limited import-export network and it is very expensive to export end-products from the USSR. *See generally* Business International Seminar, *supra* note 61, at 27.

107. *See generally* Buzescu, *supra* note 25, at 426.

108. Scriven, *supra* note 2, at 648.

109. Buzescu, *supra* note 25, at 415 ("interest in formation of joint ventures reflects [Eastern Europe's] expectation that [joint ventures] will bring about an increase in exports and hard currency reserves.").

110. Business International Conference, *supra* note 11.

111. *ECOTACC*, *supra* note 21, at 24.

in their supply of hard currency. These decreases would occur if foreign investors were allowed to take out more hard currency than the joint venture made through exports.

Another very important factor when dealing with profits and currency exchange is whether the joint venture has access to the host country's domestic market.[112] If the joint venture is not allowed access to the local market, the attraction to foreign investors of the unexploited Eastern European market is greatly reduced. Without access to the domestic market, all profits would have to be generated through exports. The investor would probably go elsewhere and set up a wholly owned production.[113] In this manner, the investor does not lose control of its technology or sacrifice part of its market to the Eastern Europeans.[114] Therefore, in order to attract investors, some access to domestic markets must be permitted.

The Soviet legislation makes it legal for a joint venture in the USSR to sell its products in the Soviet domestic market[115] but the Soviet legislation does not guarantee access.[116] Some access must be allowed, or, as discussed above, investors may invest their money elsewhere. Looking at the present economic reforms taking place in the Soviet Union, one main focus is to give the Soviet workers incentive to produce quality work.[117] This situation gives the Soviets another good reason to allow joint ventures access to their domestic markets.[118] If the ruble could buy world class goods, it would make the ruble worth more in the eyes of the worker and thus give the Soviet worker an incentive to do better work.[119] How much access the Soviets will

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112. *See* Scriven, *supra* note 2, at 665; *see also* Buzescu, *supra* note 25, at 426.

113. *Id.*

114. *Id.* ("This process will also be affected by the cost production in the host country. Joint ventures in the Soviet Union may pay in rubles for raw materials but they must take into account world market prices.").

115. *ECOTACC*, *supra* note 21, at 24. "The marketing of the products of a joint enterprise in the USSR and the deliveries to it of equipment, raw and other materials, accessories, fuel, energy, etc. from the domestic market of the USSR are paid for in roubles through corresponding foreign trade organizations at agreed upon prices with due account for prices of the world market."

116. *Id.* at 23 ("USSR state bodies . . . do not guarantee the marketing of their products.").

117. *Gorbachev's New Team Sets Long-Term Course*, XV BUS. E. EUROPE 82 (Mar. 1986).

118. *Soviet 1987 Plan Reflects Reform Drive*, XV BUS. E. EUROPE 379 (Dec. 1986) ("For Soviet citizens, something worth buying usually means goods [meeting] Western standards. Opportunities will certainly exist for Western companies to help in this field.").

119. *Id.*

allow remains to be seen. However, it is clear that if a foreign investor intends to use the joint venture solely to import western goods to the Soviet domestic market, the foreign investor will not be able to repatriate the profits in hard currency.[120]

An additional reason that foreign investors want access to domestic markets is to generate a supply of local currency for a joint venture. The local currency is needed to pay operating expenses most of which are paid in the currency of the host country.[121] The revenues in local currency will permit foreign investors to conserve hard currency for the repatriation of profits.[122] Hard currency, generated through exports, will not have to be converted to local currency to pay normal operating expenses.[123] The Soviet legislation indicates the majority of operating expenses will be in rubles.[124] Conservation of currency in the manner described above, however, will be greatly limited as the Soviets have indicated that ruble income will only produce ruble profits.[125]

By holding foreign investors to the zero balance currency requirement and permitting ruble income to generate only ruble profits, the Soviet have severely restricted the foreign investor's ability to exchange any profits made on the Soviet domestic market to hard currency for repatriation. Countertrade is the solution offered by the Soviets.[126] The Soviets want ruble profits to be spent on Soviet goods for export and resale by the foreign participant by way of the foreign participant's marketing network. In this manner, the Soviets' hard currency supply will not be depleted, and the foreign investor will be able to convert rubles into hard currency indirectly.

The countertrade strategy will only work if the foreign investor is equipped to deal in countertrade and if the Soviets come up with a product which the foreign investors are willing to buy. There are Soviet goods and products which a foreign investor may wish to purchase. As of yet, there is no network to which foreign investors may

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120. Business International Conference, *supra* note 11.

121. *See* Buzescu, *supra* note 25, at 427.

122. *Id.*

123. *See generally, ECOTACC, supra* note 21.

124. *See generally, ECOTACC, supra* note 21, 22-6.

125. Business International Seminar, *supra* note 61, at 26.

126. *USSR Forced to Cut Imports, supra* note 5; *Soviets Pushing CT to Boost Emports to West*, XV BUS. E. EUROPE 137 (May 1986)(Even though these articles express reasons for the Soviet push for countertrade before the Soviet Joint Venture Laws were revealed, those reasons are nonetheless valid in the context of a joint venture in the USSR.).

turn in order to find out which products are available.[127] Moreover, there is no guarantee that there will be a consistent supply once a product is located.[128] If the Soviets created such a countertrade network, foreign investors would certainly feel more secure about their ability to exchange ruble profits for hard currency profits.

XI. TAXATION

In designing a tax structure for joint ventures, two main concerns surface: generation of revenues for the state and provision of incentives to invest or reinvest in a joint venture.[129] All taxes generate revenues for the state. The Soviet legislation indicates only two taxes which are primarily for the generation of revenues: a 30 percent profits tax [130] and foreign workers' payment of Soviet income tax.[131]

As an incentive to invest, the Soviet legislation provides a two-year tax holiday from the 30 percent profits tax.[132] The tax holiday may be extended through negotiations with the USSR Ministry of Finance which can grant tax privileges or fully exempt separate taxpayers.[133] This tax holiday will not be much of an incentive if it does not extend to the first few profit making years of the joint venture. During the first few years, new businesses do not usually realize a profit. Thus having a holiday from a profit tax during a venture's first few negative balance years will have little impact on the foreign investor's decision to invest.[134]

Further, foreign investors must also take into consideration the potential tax burden imposed by their home country.[135] Even if the tax holiday did extend to the joint venture's first profit making years,

127. *See Changes in Soviet CT Organization*, XVI BUS. E. EUROPE 179 (June 1987).

128. *See Soviet Countertrade? Yes, but Wait for it*, XVI BUS. E. EUROPE 179 (June 1987); *see also Did USSR's "Superministry" Ever Have Goods in CT?*, XVI BUS. E. EUROPE 163 (May 1987).

129. Buzescu, *supra* note 25, at 432.

130. *ECOTACC*, *supra* note 21, at 25.

131. *Id.* at 26 ("Wages received by foreign workers of a joint enterprise . . . are liable to an income tax in the amount and according to the order stipulated by Soviet legislation.").

132. *Id.* at 25 ("During the first two years of their work joint enterprises are exempt from the profits tax."); *see epilogue* October 1987 Amendments (The Soviet Amended hard tax holiday to begin when the JV begins making profit.).

133. *Id.* ("The USSR Ministry of Finance has the right to reduce the volume of the tax or to fully exempt from it separate taxpayers.").

134. Legal Times, *supra* note 25, at 13, col. 2.

135. *See epilogue* October 1987 Amendments (New Soviet tax regulations recognize Western double taxation agreements.).

there may not be much of an incentive to invest if the foreign investor's home country has a tax crediting system. Instead of being free from paying a tax, the foreign investor will have to pay taxes to his own country rather than the Soviet Union during the period of the tax holiday.[136]

Another investment incentive is offered through the absence of customs duties for the imported goods that are necessary for the initial capitalization of the joint venture.[137] However, this implies that there will be duties on imports in the future after initial capitalization. In addition, tariffs on goods exported from the Soviet Union imposed by foreign countries must be taken into consideration. The Soviet Union is not a member of GATT and does not hold most favored nation status. The Soviets are hoping that once foreign investors enter into joint ventures on Soviet soil, the foreign investors will be inclined to exert pressure on their respective governments so that the Soviets will be able to join GATT and attain most favored nation status. As it stands now, GATT members rejected the Soviets' most recent request to be an observer at recent GATT talks.[138]

As an incentive to reinvest, contributions to the reserve fund and other funds for research and development may be deducted in determining taxable income.[139] The Soviet legislation limits contribution to the reserve fund to 10 percent of yearly profits.[140] Contribution to the reserve fund can be made only until the reserve fund reaches an amount equivalent to 25 percent of the ownership capital of the joint venture.[141] The Soviet legislation does not discuss details of any other funds. An additional incentive to reinvest is a 20 percent tax applied to the profits repatriated by the foreign investors.[142] Foreign investors may choose to reinvest in order to avoid paying the repatriation tax. In this manner,

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136. *First East-West Tax Conference May Open Soviet Bloc to Western Companies*, 35 TAX NOTES 230 (Apr. 1987).

137. *ECOTACC*, *supra* note 21. ("Equipment, materials and other property brought to the USSR by foreign participants of joint enterprises as their contribution are exempt from customs duties.").

138. *See Soviets Play the Alphabet: EC, Now GATT, Next IMF?*, XV BUS. E. EUROPE 283 (Sept. 1986); *See also* Kempe, *supra* note 95.

139. *ECOTACC*, *supra* note 21. (Profit tax is paid after "deductions to the reserve fund and to other funds of the joint enterprise intended for the development of production, science and technology.")

140. *Id.* at 24 ("Deductions to the reserve fund do not exceed 10 per cent of the volume of annual profit until the volume of the reserve fund becomes equal to 25 per cent of the ownership capital of the enterprise.").

141. *Id.*

142. *Id.* (A 20 per cent tax is imposed on exported profits.).

foreign investors may use the money they would have had to pay out in taxes to increase their equity in the venture. However, this will only be an incentive if the foreign investors want to increase their equity and have not yet reached their forty-nine percent ceiling on ownership interests.

Depreciation deductions will be made according to Soviet law.[143] The Soviet legislation indicates that the amount of the depreciation deductions will be retained by the joint venture to be used for maintenance and replacement of equipment.[144] In effect, through the Soviet depreciation laws, investors pay for their capital a second time, i.e. investors are forced to recapitalize.

Losses incurred by joint ventures in Eastern Europe cannot be carried backwards or forwards.[145] Losses are covered by reserve funds, refinancing, new injections of capital, or other similar actions.[146] The Soviet legislation requires the creation of a reserve fund to cover any possible losses.[147] If the fund does not cover the loss, unless one of the above-mentioned actions is taken, the property of the joint venture will be used.[148]

The Eastern European rejection of the concept of carrying a loss forward or backward is understandable. In a socio-economic system, the idea is to promote the goals of the state. The concept of carrying a loss forward or backward was implemented in the West to promote private enterprise, not the goals of the state. In order to deal with the West, the Soviets must now balance the interests of the state and private interests, even though they do not allow the carrying of a loss. In addition, by disallowing the carrying of losses, a joint venture will have to immediately cover its losses, and there will be no possible tax refunds from the Soviet state.

XII. TERMINATION

Joint venture laws in Eastern Europe usually provide for the termination of the joint venture after a time period set by legislation or

143. *ECOTACC*, *supra* note 21, at 25.

144. *Id.* ("The sums paid [for depreciation] remain at the disposal of joint enterprises.").

145. Buzescu, *supra* note 25, at 424; *see epilogue* October 1987 Amendments (There is discussion of allowing losses to be carried forward during a Soviet JV, first two years of operation.).

146. *Id.* (This is only true for Romania, Hungary, Bulgaria and now for the Soviet Union).

147. *ECOTACC supra* note 21, at 24 ("A reserve fund and other funds necessary for the work of a joint enterprise are created there." ["There" means in the USSR State Bank or the Bank for Foreign Trade.]).

148. *Id.* at 23 ("A joint enterprise is liable for the fulfilment of its commitments with all of the property belonging to it.").

negotiated by the parties.[149] A finite period of existence for the joint venture entity makes private ownership of the means of production more palatable from the Eastern European country.[150] The private ownership is considered only temporary. Such termination, however, is anathema to the foreign investor. Termination of a successful venture at an arbitrarily set time does not make good business sense.[151] To make the foreign investor feel more secure, a number of Eastern European countries have amended their joint venture laws to allow for a possible extension or renewal of the joint venture after negotiations with the proper agencies.[152] The Soviet legislation allows the duration of the joint venture to be set by the parties.[153] The foreign investor should include in the founding documents a means of renewal or extension if the business is successful in order to avoid the untimely termination.

Termination of the joint venture may also occur at a time other than the time stated in the founding documents or in the laws of the host country.[154] The venture may fail, or the parties may agree to liquidate the business.[155] Further, if the foreign investor wants to withdraw, it may sell its share of the joint venture to its Eastern European partner.[156] These methods of termination are mostly governed by the terms of the founding documents of the joint venture.[157]

Terms included in the Soviet legislation provide that the foreign investor can sell its share of the venture to its Soviet partner if the foreign investor gets permission from the State Foreign Economic Commission of the USSR Council of Ministry, and if the Soviet partner exercises its preferential right to buy.[158] One question that must be addressed in the founding documents is what will happen if the State Foreign Economic Commission does not give its permission and the foreign investor wants to sell.

The liquidation of the joint venture will mostly be determined by the terms of the founding documents.[159] However, the Soviet legislation

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149. *See generally, Buzescu,, supra* note 25, at 438.
150. *Id. See also* note 4.
151. *Id.*
152. *See generally, Id.*
153. *ECOTACC, supra* note 21, at 22 ("The term of work of the joint enterprise is coordinated by its participants in founding documents . . . or in [the joint venture's] charter.").
154. *See* Buzescu, *supra* note 25, at 438-39.
155. *Id.*
156. *Id.*
157. *Id.*
158. *ECOTACC, supra* note 4, at 23.
159. *Id.* at 26.

provides that the USSR Council of Ministers may force liquidation if it decides that a joint venture is not meeting the "objectives and tasks envisaged by the founding documents."[160] Under this provision, if a problem arises, the Council of Ministers has the leverage to rectify the situation.

Finally, an important aspect of termination of any sort is the valuation of the shares of the venture and the venture's assets.[161] The Soviet Proposal explains that value is to be determined at the moment of liquidation and that the foreign investor's share may be returned in money or products.[162] The proposal says nothing about valuation in case of a sale or how value is to be determined. The valuation procedure is usually outlined in the founding documents.

XIII. Conclusion

There are many possibilities for joint ventures in the Soviet Union. The amount of raw materials available and the dearth of consumer goods are a foreign investor's dream. Many companies in the United States and other countries have expressed interest in joint ventures in the Soviet Union. However, the success of joint ventures in the Soviet Union will depend on how much foreign investors will be allowed to penetrate the Soviet domestic market, how easy it will be to repatriate profits, how much profit will be left after Soviet taxes and after taxes of the foreign investors home country, how much control the foreign investor will have in the venture's operation, and lastly, how flexible the Soviets will be in negotiating the terms of the joint venture's founding documents.

Through this joint venture legislation the Soviets have expressed a number of very strong desires: (1) that joint ventures be export oriented; (2) that the only hard-currency which will leave the USSR will be the profits from exports; and (3) that there will be importation of Western technology, goods, and know-how. As discussed above, these desires on the part of the Soviets conflict with some of the desires of foreign investors: (1) that joint ventures have access to the

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160. *Id. See* note 38.

161. Buzescu, *supra* note 25, at 439.

162. *ECOTACC*, *supra* note 21, at 23. "In the event of the liquidation of a joint enterprise or withdrawal from it, a foreign participant has the right to be given back its contribution in the form of money or products in the volume of the residual value of the contribution at the moment of the liquidation of the enterprise after fulfilling its commitments [with] Soviet participants and third persons."

Soviet domestic market; (2) that joint ventures have access to hard currency supplies for repatriation of profits; and (3) that foreign investors have some control over the operation of the joint venture.

In addition, the joint ventures will have to pay foreign employees high salaries, pay world market prices for their supplies from Soviet sources, and work out a distribution network from a basically land-locked country with a closed society which is known for its inefficiency. Experience with other Eastern European countries indicates that for the above reasons, foreign investors will not be attracted to these joint ventures. However, some foreign companies may enter joint ventures in the USSR in an attempt to generate goodwill. Such investors should be prepared to produce the opposite effect if the venture fails. Joint venture laws in other Eastern European countries have been evolving for over 20 years in an effort to attract foreign investors. Whether the Soviet joint venture laws will evolve remains to be seen.

XIV. EPILOGUE

Since the enactment of the Soviet-Western joint venture legislation by the Soviets in January 1987, at least 250 proposals have been submitted by Western companies desiring to invest in ventures with Soviet partners.[163] Six joint ventures have already been registered.[164] However, along with the interest in such joint ventures there has been alot of criticism of the January 1987 legislation. In response to this criticism and in an attempt to attract more Western investors, the Soviets amended, in October 1987, a number of the provisions of the earlier legislation.[165]

A. *Approval*

Final approval of a joint venture originally rested with the Council of Ministers in Moscow.[166] Under the October 1987 amendments (Oc-

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163. *Soviets Say 250 JV Proposals on Hand* XVI BUS. E. EUROPE 226 (July 1987).

164. *Soviets Introduce Broad Changes to JV Regulations* (Soviets Introduce), XVI BUS. E. EUROPE 331 (October 1987); *see First Japanese-USSR JV Reflects Soviet Goals*, XVI BUS. E. EUROPE 225 (July 1987); *see also Finns or Japanese? First Soviet JV Signed*, XVI BUS. E. EUROPE 201 (June 1987); *see also Plans Unveiled for Soviet Plant* Gainesville Sun, Nov. 20, 1987, at C1, col 1 (Armand Hammer has joined with an Italian company and a Japanese Corporation to build a petrochemical complex in the Soviet Union.); *see also What's New in Your Industry* XVI BUS. E. EUROPE 351 (Nov. 1987) (Two Pizza Huts will open in Moscow. If they are successful more will follow).

165. Pope, *Soviets Amend Rules Covering Joint Ventures*, Wall St. J., Oct. 27, 1987, at 31, col 1.

166. *ECOTACC*, *supra* note 21, at 26.

tober Amendments) any branch ministry or Union Republic Council of Ministers may approve a joint venture.[167] This will save time and money for the partners in the venture for they will no longer have to go through the central Moscow bureaucracy to set up a joint venture.

B. *Accounting Systems*

Originally the Soviet Joint Venture Legislation called for Soviet accounting system to be applied by a Soviet Auditing organization.[168] The October Amendments allow the joint venture to keep two sets of books, one by the Soviet accounting system and one by Western accounting system. The October Amendments also allow the participants to determine which currency is to be used in accounting sales and purchases, foreign and domestic.[169] Western firms will be better able to incorporate the Soviet joint venture into overall company operations with the aid of these modifications.[170]

C. *Capital Contributions*

In determining the value of capital contributions by the participants in the joint venture, the original Soviet legislation indicated that value would be determined with "due account for prices in the world market" and calculated in rubles.[171] The October Amendments allow value to be calculated in rubles or foreign currency.[172] The Soviets have indicated they are working on guidelines to standardize the valuation process of Soviet non-cash contributions and are willing to accept the criteria used in the West to determine the value of Western non-cash capital contributions.[173] These modifications will help Western investors calculate the capital contributions. However even with guidelines set up for valuation of Soviet inputs, such guidelines can be changed after the venture is off the ground.

D. *Taxation*

The original joint venture legislation provides a two year tax holiday from the profits tax starting at the time a venture begins opera-

167. *See Soviets Introduce*, *supra* note 164.
168. *Id.*
169. *Id.*
170. *Id.*
171. *ECOTACC*, *supra* note 21, at 23.
172. *Soviets Introduced*, *supra* note 164.
173. *Id.*

tion.[174] The October Amendments now allow the two year tax holiday to begin from the time the venture starts showing a profit.[175] This is beneficial to Western investors for reasons discussed in the text. In addition new Soviet tax regulations for joint ventures take into account double taxation agreements with Western Countries.[176]

E. Other Prospective Amendments

There are indications that the Soviets may allow losses occuring within the first two years of operation to be carried forward for two years.[177] There is also a report that indicates the Soviets will allow better access to the Soviet domestic market.[178] But details have not yet been released.

F. Conclusion

The evolution of the Soviet joint venture legislation has begun. More regulations and modifications are expected as joint ventures are signed and begin start up procedures. However, the October Amendments are not enough to change the general assessment of joint ventures in the Soviet Union set forth in the text of this article.

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174. *ECOTACC, supra* note 21, at 25.
175. *Soviets Introduced, supra* note 164.
176. *Id.*
177. *Id.*
178. Pope, *supra* note 165.