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German Reunification: The Effect on International Ventures

Leonard P. Feldman

GERMAN REUNIFICATION: THE EFFECT ON INTERNATIONAL JOINT VENTURES*

I. INTRODUCTION

The German Democratic Republic (GDR or East Germany)[1] and the Federal Republic of Germany (FRG or West Germany)[2] have reunified economically. Western businessmen who seek to invest in Germany have prepared for virtually any possibility, including overnight revision of business plans and concepts.[3] While some citizens who remain in the GDR clash with newly forming opposition parties, many East German residents flee daily to the FRG.[4] Yet within the

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1. The German Democratic Republic is commonly referred to as GDR or East Germany.
2. The Federal Republic of Germany is commonly referred to as FRG or West Germany.
3. *EE in Confusion: How Can Businessmen React?*, BUS. E. EUR., Nov. 20, 1989, at 369.
4. Schares, *Dealmakers are Pouring Through the Brandenburg Gate*, BUS. WK., Feb. 12, 1990, at 42; *see also Bonn and Berlin Agree to Talks on Monetary Union*, Fin. Times, Feb. 14, 1990, at A1, col. 4. Chancellor Kohl revealed that 85,000 East Germans had left their homes for the West so far this year and that 344,000 left for the FRG last year. *Id. See generally* Bennett, *German Unification Talks Ok'd*, Miami Herald, Feb. 14, 1990, at A12, col. 2 (stating Gorbachev has urged restraint since 400,000 Soviet troops still remain in East Germany compared to 250,000 U.S. troops stationed in West Germany).

first few months since the Berlin Wall fell, East-West business partners have signed and negotiated numerous cooperative agreements.[5]

One such cooperative agreement which the GDR and FRG currently are promoting is the international joint venture.[6] In order to facilitate business transactions, the GDR and FRG are now beginning the difficult task of considering how to reconcile their commercial laws and policies which affect joint ventures.[7] The difficult task of reconciliation is better understood by examining the economic history of the GDR and FRG since World War II.

II. Economic History

A. *The World War II Split*

The German economic schism began when the German armed forces surrendered to the Allied Powers who, under the Potsdam Declaration of June, 1945, assumed supreme authority over Germany.[8] As a result of the Cold War which followed, the Allied Powers encouraged the formation of two German states with their own constitutions.[9] Consequently, the GDR abandoned its identity with the still existing German Reich.[10] The FRG, however, maintained its identity with the Reich and considered its government to be the only legitimate government of Germany.[11]

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5. Schares, *supra* note 4, at 42. Gorbachev's suggestion on Jan. 30, 1990, that reunification is now possible, has fueled hopes that East Germany will soon establish a market economy. *Id.*

6. *Eastern Europe: Topping the Hit Parade*, 37 Bus. Int'l 6 (1990). *See generally* Maskow, *German Democratic Republic*, in Legal Aspects of Joint Ventures in Eastern Europe 47, 56 (D. Campbell ed. 1981). Professor Maskow defines a joint venture as a "relatively long-lasting, complex and intensive cooperation of two or more partners in order to reach a common purpose, either by creation of a company (legal person or not) or on a mere contractual base, connected with common decisionmaking and risk- and profit-sharing." *Id.*

7. Bennett, *supra* note 4, at A12. Premier Modrow is leader of the GDR while Chancellor Kohl is leader of the FRG. *Id.*

8. Simma, *Legal Aspects of East-West German Relations*, 9 Md. J. Int'l L. & Trade 97, 98 (1985). The four Allied Governments were Britain, France, the Soviet Union and the United States.

9. *Id.* at 99.

10. *Id.* The concept of the still existing German Reich was primarily theoretical. *Id.*

11. *Id.* at 100. According to the Hallstein Doctrine, the FRG would consider it an unfriendly act when states who had previously established diplomatic relations with the FRG subsequently established relations with the GDR. As a result, the FRG would halt diplomatic relations with such countries. *Id.*

B. *The German Democratic Republic*

After World War II, the Soviet Union represented the international interests of the East European countries, including the GDR.[12] This economic relationship led to the creation of the Council for Mutual Economic Assistance (CMEA) which included East Germany.[13] The CMEA countries believed that by limiting trade with Western nations, they would demonstrate their self-sufficiency and their ability to produce goods of quality competitive with their Western counterparts.[14]

However, by the late 1950s and 1960s the East European states demanded increased trade with the West for capital goods, technology and marketing skills.[15] From 1953 to 1969, East and West European trade almost tripled.[16] In the 1970s the GDR's dependency on foreign trade forced the GDR to develop external economic relations with the other socialist countries of the CMEA.[17]

However, in 1976 the CMEA countries had accumulated a collective trade deficit to Western nations of almost seven billion U.S. dollars.[18] As a result, Western banks were reluctant to lend hard currencies to the East European countries.[19] To correct this debt-service ratio problem, the CMEA countries began to engage in joint ventures with developed market economy countries (DMECs).[20] Meanwhile, the GDR government, which continued to control the entire economy, still sought purchasing and selling conditions in DMECs which corresponded to the socialist conditions of the GDR economic system.[21]

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12. Campbell & Miller, *Joint Ventures in Eastern Europe*, in LEGAL ASPECTS OF JOINT VENTURES IN EASTERN EUROPE 1, 4 (D. Campbell ed. 1981).

13. *Id.* Another abbreviation for CMEA is COMECON.

14. *Id.* Simultaneously, the United States dissuaded the Western Allies from initiating industrial and technological trading relations with Eastern Europe through the use of embargo lists. *Id.*

15. *Id.*

16. *Id.* at 5.

17. Maskow, *supra* note 6, at 47; *see also* German Institute for Economic Research, GDR AND EASTERN EUROPE, A HANDBOOK 168 (1989). The predominance of the CMEA characterizes the GDR's structure of trade. In the 1950s and 1960s the Socialist countries accounted for approximately three quarters of the GDR's foreign trade. *Id.*

18. Campbell & Miller, *supra* note 12, at 5.

19. *Id.*

20. *Id.* at 5-6. By utilizing joint venture agreements, the CMEA countries hoped to lure Western management, marketing skills and technological know-how to their countries. *Id. But cf.* Baylis, *Explaining the GDR's Economic Strategy*, 40 INT'L ORG. 381, 418 (1986) (explains that the GDR is the most prosperous and technologically advanced of the CMEA countries and that the GDR's success as a country is evident by the limited measures that the GDR needed to reduce its debt).

21. Maskow, *supra* note 6, at 48.

C. *The Federal Republic of Germany*

During the two world wars the FRG government had replaced its market economy with a planned state economy.[22] However, with the leadership of Ludwig Ehrhard,[23] the West German government largely had set aside the state planned economy by the end of World War II.[24] Thus, state intervention and control would not hamper private industrialization and activity in the FRG economic market.[25]

The highly disciplined West German work ethic, U.S. assistance through the Marshall Plan, introduction of market principles through currency reform, and stable industrial relations between management and labor led to the successful reconstruction of West Germany following World War II.[26] Work councils operating under the Labor Management Relations Act of 1952 protected employees against unfair dismissal and allowed employees to help run the factories.[27] Industrial relations remained stable in the FRG since employees had rights, and unions settled most industrial disputes.[28]

By the 1970s, the FRG commercial law provided for substantial corporate and partnership structuring while the banking system provided for financial assistance for industrial objectives.[29] The FRG commercial structures and banking system were quite conducive to Western business and cooperative agreements. An understanding of the commercial laws regulating the corporate systems in the GDR and FRG explains the fundamental economic strategy leading to the economic reunification of the two countries today.[30]

III. STATUS QUO OF GERMAN COMMERCIAL LAW

A. *FRG Commercial Law*

Presently, the Commercial Code of the FRG provides for two corporate forms, the GmbH (limited liability company) and AG (stock

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22. N. HORN, H. KOTZ & H. LESER, GERMAN PRIVATE AND COMMERCIAL LAW: AN INTRODUCTION 6 (1982) [hereinafter N. HORN].

23. Ehrhard later became Economics Minister and Federal Chancellor.

24. N. HORN, *supra* note 22, at 6. *See generally* Simma, *supra* note 8 (summarizing German economic and political conditions following World War II).

25. *See* N. HORN, *supra* note 22, at 5.

26. *Id.* at 5.

27. *Id.* at 7-8. *See also* J. BEHRMAN, INDUSTRIAL POLICIES: INTERNATIONAL RESTRUCTURING AND TRANSNATIONALS 27, 28 (1984) (presenting concept of concerted action, called "concertation," which involves three way dialogues among business, government and labor).

28. N. HORN, *supra* note 22, at 8.

29. J. BEHRMAN, *supra* note 27, at 28.

30. *See* Baylis, *supra* note 20, at 381, 382.

corporation).[31] The GmbH, tailored to a limited number of shareholders, requires only a single shareholder and a minimum capital of 50,000 Deutsche Mark (DM).[32] The AG, styled as a public corporation, requires a minimum of five incorporators, and a capital investment of 100,000 DM.[33] Most foreign businessmen wishing to do business in a corporate form in Germany will probably conduct their business in the form of a GmbH.[34] While these corporate structures suit long-term or permanent and formalized joint ventures, partnership structures allow greater flexibility for short-term and less formalized ventures.[35]

The FRG commercial law allows for different forms of partnerships including the civil law partnership (BGB Gesellschaft), and silent partnership (stille Gesellschaft).[36] Two major differences between these entities are the number of partners the agreement requires and the number of permits to manage the business, and whether the agreement allows partners to limit liability from creditors.[37] The BGB Gesellschaft, or civil law partnership, is often the basis of a joint venture.[38] Mere contractual arrangements can create a civil law partnership.[39] The stille Gesellschaft, or silent partnership, is also popular with foreign businessmen.[40] Silent partners participating in a commercial enterprise through a contribution of money, property, or

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31. H. JUNG & J. GRES, STARTING BUSINESS OPERATIONS IN GERMANY 32 (1984) [hereinafter H. JUNG]. As legal entities, both types of corporations can act, purchase and sue and be sued in their own corporate name. *Id. See generally* FEDERAL OFFICE OF FOREIGN TRADE INFORMATION, THE FEDERAL REPUBLIC OF GERMANY AS A BUSINESS PARTNER (1988) (provides a current outline of the FRG commercial law affecting international business enterprises).

32. H. JUNG, *supra* note 31, at 33.

33. *Id.* Thus, FRG commercial law provides for the AG to protect a larger number of shareholders while the GmbH suits medium-sized and small enterprises with only a few participants. *Id.*

34. *Id.* at 35.

35. Wrightman, *Joint Venturing in Europe*, in THE HANDBOOK OF JOINT VENTURING 255 (1988); *see also* H. JUNG, *supra* note 31, at 37 (while the AG and GmbH are subject to income tax, partnerships are non-taxable entities).

36. H. JUNG, *supra* note 31, at 37. Other partnership forms include the general commercial partnership (OHG), limited commercial partnership (KG) and the limited share partnership (KGaA). *Id.*

37. *Id.*; *see also* N. HORN, *supra* note 22, at 239-240 (generally, partners are the proprietors of the enterprise, are the joint co-owners of the assets and are jointly and severally liable for debts incurred by the partnership).

38. H. JUNG, *supra* note 31, at 38.

39. *Id.*

40. *Id.*

services can create the silent partnership.[41] These commercial entities as well as the AG and GmbH are closely tied to the FRG banking system.[42]

The West German government channels its financial assistance for industries through the Bundesbank (Central Bank).[43] The banking system controls more than two-thirds of the one-hundred largest West German firms and provides strategic direction for West German companies.[44] A bank officer may sit on the supervisory board of a major company and may even serve as chairman of the board.[45] As a result, the banks insist on competitive returns from industries and look carefully towards market signals.[46] This raises the question of whether German reunification will cause the GDR to adopt the FRG corporate and banking laws.

B. *GDR Commercial Law*

Traditionally, the GDR external-economy monopoly law in the Constitution granted the government power to control the economy.[47] However, the Constitution now grants greater autonomy to enterprises in the GDR with foreign participants.[48] To establish an enterprise, the GDR Economic Committee must grant approval.[49] A participant in the enterprise then must register in the State Contract Court's

41. *Id.* The partners' contributions become the assets of the enterprise and as a result, the silent partner participates in the profits and losses of the partnership. *Id.*

42. *See generally* J. BEHRMAN, *supra* note 27, at 28-29 (explains FRG banking system).

43. *Id.* at 28. The Central Bank channels its funds into major banks such as the Deutsche Bank, Dresdner Bank and Commerzbank. *Id.*

44. *Id.* at 30. Due to the long-term habit of close cooperation between industry and government, banks are usually ready to organize cartels or other cooperative agreements. *Id.* at 29.

45. *Id.* at 28. For instance, the Deutsche Bank had a director or member of its senior staff on the board of nearly every one of the dozen largest steel companies. Likewise, the banks maintained a viable auto industry by allowing Volkswagen an extended period to pay its mid-1970s debt. By extending the payment period, Volkswagen was able to make the necessary improvements to replace the "Beetle" automobile. *Id.* at 28-29.

46. *Id.* at 30.

47. Maskow, *supra* note 6, at 49. The Constitution enables the GDR to govern the external economy, including foreign trade. *Id.*

48. *See generally* Order on the Establishment and Activities of Enterprises with Foreign Participators in the German Democratic Republic of January 25, 1990, 1990 Gesetzblatt der DDR [GBI] I, No. 4 (E. Ger.) [hereinafter Order]. The term participants describes the persons or entities holding an interest as shareholder or partner in the Enterprise. *Id.*

49. *Id.* § 8(1). A commission of experts representing the various governmental bodies grants approval. *Id.* at § 8(2). The application for approval contains various information including a statement of the Enterprise's legal form and amount of share capital, as well as a description of the participants and subject matter of the economic activities. *Id.* at § 9.

public register.[50] Once the Economic Committee approves the enterprise, and a participant in the enterprise registers it, the enterprise acquires legal capacity.[51]

Some corporate forms existing in the GDR suit various kinds of joint ventures.[52] These include the limited company (GmbH), stock corporation (AG), general partnership (OHG) and limited partnership (KG).[53] The shareholders freely arrange the articles of incorporation.[54] However, a significant legal drawback to the establishment of foreign joint ventures is that, under the GDR Constitution, property is nationally owned.[55] According to the Constitution, GDR citizens and foreigners cannot obtain property in nationally-owned items such as industrial enterprises.[56]

Until recently, the GDR refused to integrate joint venture enterprises into its socialist economic system.[57] As joint ventures are established, the GDR must modify its commercial law to suit its needs and accommodate the needs of its foreign partners.[58] How the GDR and FRG will modify the commercial laws which affect international joint ventures raises many questions.

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50. *Id.* § 14(1), (2). The register examines the legal registration requirements and the articles of incorporation. *Id.* at § 14(1).

51. *Id.* § 7.

52. *Id.* § 5; *see also* Maskow, *supra* note 6, at 60. In part, the GDR inherited some of these corporate forms from capitalist Germany before W.W.II. *Id.*

53. Order, *supra* note 48, at § 5(1), (2). A GmbH requires at least one managing director be a GDR citizen. *Id.* at § 6(1). Furthermore, an AG requires that the Management Board (Vorstand) proportionally represents citizens of the GDR to the percentage of GDR participation in the share capital. *Id.*

54. *Id.* § 5(4).

55. Maskow, *supra* note 6, at 50. *But cf.* Order, *supra* note 48, at § 17(2)-(3) (explains that only GDR participants can contribute land to the share capital, but if GDR participants contribute buildings or building facilities, then independent ownership exists irrespective of land ownership).

56. Maskow, *supra* note 6, at 50. One way the GDR has maintained state control over industries is by establishing combines (or kombinate). Combines are large economic entities which comprise entire branches of industry and consist of several enterprises. Managers govern the combines which are liable with their own funds. *Id.* at 49, 50; *see also* UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, MANUAL ON TRADING WITH THE SOCIALIST COUNTRIES OF EASTERN EUROPE at 36, U.N. Doc. UNCTAD/ST/TSC/1/Rev. 1, U.N. Sales No. E.87.II.D.11 (1980) (the GDR formed the combine system to concentrate industrial capacity and pool together various enterprises' resources to improve efficiency. The combine management regulates all foreign trade activities.).

57. *See* Nesirky, *East Germany Sets Up First Joint Venture with Foreign Interests*, THE REUTER LIBR. REP., Mar. 13, 1989.

58. *See generally, East Germany Not Expected to Show Economic Growth in 1990; Parliament Drafts Amendments to Permit Ventures with Foreign Firms*, McGraw Hill News, Jan. 9, 1990 (explores the socialist ideology which still persists in the GDR).

IV. Reunification and the German Commercial System

A. *The Changing German Commercial Law*

Presently, scholars disagree as to the current status of German commercial law.[59] The GDR government, to some extent still a socialist regime, continues to play a major role in decisionmaking processes involving business transactions.[60] The GDR is becoming quite flexible about Western investment, but has not yet embraced capitalism completely.[61] For example, the East German Economics Minister, Christa Luft, has recently stated that key industries will remain the property of the people.[62]

Furthermore, the GDR Economic Committee, consisting of government representatives, maintains the power to approve all enterprises and industries in the GDR.[63] These government representatives, therefore, ultimately decide which Western businesses the GDR will accommodate. Whether the decisions of the GDR Economic Committee will parallel the substantive changes in the GDR commercial law is not yet evident.

Since private enterprises and individual companies in the FRG function freely, many West Germans feel that the East German proposals are not sufficient.[64] The FRG suspects that the GDR fears that small West German investors will undermine the large GDR companies that form the basis of the socialist economy.[65] However, one possible way to enable the FRG to promote investments as well as its banking system in the GDR is through monetary union with the GDR. The East German economy may be doomed to decline without monetary union to provide greater stability.[66]

For a monetary union to occur, the West German Bundesbank would have to control the total money supply and force the East

59. Interview with Peter Gilles, Professor, Johann Wolfgang Goethe University, in Frankfurt, West Germany (Jan. 31, 1990) [hereinafter Gilles]. Professor Gilles expressed that confusion exists regarding the present commercial law in Germany. *Id.*

60. *See* Ferguson, *East Germany Remains Cautious on Western Investment*, THE REUTER LIBR. REP., Jan. 16, 1990; *see also* Order, *supra* note 48 and accompanying text.

61. Ferguson, *supra* note 60.

62. *Id.* Luft explained that these industries include postal services, communications, power stations and heavy industry. *Id.*

63. Order, *supra* note 48, at § 8(1).

64. Ferguson, *Proposed East German Reforms Get Guarded West German Response*, THE REUTER LIBR. REP., Jan. 11, 1990 (West Germans particularly dislike East Germany's capping foreign holdings at 49% and demanding the last say on which ventures are permitted).

65. *Id.*

66. *Monetary Union: Would It Help?*, The New York Times, Feb. 9, 1990, at D1, col. 3.

German central bank to yield its power to the Bundesbank.[67] As a result, East Germany would be subject to the West German banking system. The West German banking system would supervise and control many of the East German companies. This control could give the FRG the economic influence it wishes to obtain in the GDR.[68] But German restructuring presents additional issues and questions.

One major question German reunification presents is whether the GDR will allow foreign ownership and privatization of East German companies.[69] Recently, the GDR Economics Minister announced that small and medium sized foreign businesses would be permitted to own more than fifty percent of East German companies.[70] However, large foreign firms still would be restricted to forty-nine percent ownership.[71] Some West Germans foresee investment opportunities if state-owned companies are broken-up and privatized.[72] Therefore, property ownership and privatization remain speculative.

A second major question that the new German commercial law must address is whether foreign capitalists will have rights to the necessary resources, control, and labor required to establish joint ventures. Traditionally, the GDR government maintained authority over corporate management.[73] In contrast, Western managers in joint ventures have had the ability to make individual decisions, control their own operations, and obtain returns on their investments. Additionally, investors may question whether the unified law will allow managers

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67. *Id.*

68. *Id.* If the exchange rate makes East Germany more competitive, businesses in East Germany would attract larger West German and foreign investments, promoting East German business and lessening the labor flow to West Germany. On the other hand, if the exchange rate makes East Germany less competitive, there would be an exodus of workers to West Germany. *Id.* at D3. *See generally* Frohlich, *Let Monetary Union Bond East and West*, Fin. Times, Feb. 14, 1990, at 27 (explains the immediate need for economic reform as East Germans leave their country causing a decrease in production and as West Germans consequently fear a housing shortage and a decrease in wages).

69. Gilles, *supra* note 59. Professor Gilles explained that he believed that the East German views and philosophies must change before the law can change. Thus, the East Germans must accept the concepts of private property and freedom of contract before changing the law. *Id.*

70. The Bureau of Nat'l Aff., Inc., *Changes to East German Joint Venture Law Elicit Approval, Skepticism in West Germany* 7 INT'L TRADE REP. 166 (Jan. 31, 1990).

71. *Id.* This restriction does not apply when majority ownership benefits the GDR economically. *Id.; see also* Order, *supra* note 48, at § 3.

72. Schares, *supra* note 4, at 43. Presently, the combines dominate 85% of the GDR's economy. *Id.*

73. *See* Maskow, *supra* note 6 and accompanying text (providing background of GDR political system). *But cf.* Order, *supra* note 48, at §§ 20-23 (enterprises may now make decisions concerning the form of their business relations with foreign partners).

to obtain the information necessary to make informed business decisions and to make accurate assessments of their German partners' finances and resources.[74] An additional concern involves the rights of labor and management, especially during strikes or wage increases. Whether the GDR will adopt the FRG Labor Management Relations Act which protects employees remains questionable.[75]

A third legal question concerns antitrust and equal treatment of enterprise contracts. Although section 1 of the FRG's Law Against Restraints of Competition (GWB) prohibits agreements which restrict competition, the GDR has yet to enact a similar law.[76] In addition, the GDR continues to limit the areas of the economy and types of contracts permitted for investment.[77] Specifically, the GDR favors commercial enterprises which develop "high tech" or modern products. In contrast, the GDR disapproves enterprises which significantly control sectors of the GDR economy or disproportionately benefit its foreign participants.[78] While the two German states probably will examine some of these issues when restructuring their commercial law, Europe and the United States have voiced some of their own concerns.

B. *Implications Abroad*

As the European Community (EC) focuses its attention on the newly-developing market economies of Germany, many believe that Germany will become the paramount industrial power in Europe.[79] A key element to the success of the European integration is a country

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74. *See* Dobkin, *Joint Venturing with Foreign Companies in the United States*, in J. CARTER, R. CUSHMAN & C. HARTZ, THE HANDBOOK OF JOINT VENTURING 399 (1988).

75. *See* N. HORN, *supra* note 22, at 310-35; *see also* Order, *supra* note 48, §§ 30-32 (outlining employees' rights to co-determination of management and to trade union guarantees).

76. Lieberknecht, *United States Companies in Foreign Joint Ventures*, 54 ANTITRUST L.J. 1051, 1071 (1985). According to § 24(1) of the GWB, the FRG government must prohibit every merger which is expected to bring about or reinforce a market dominating position. *Id.* at 1071. Under § 22(1) of the GWB, "an enterprise holds a market dominating position if the market is not exposed to substantial competition or if the market, compared to its competitors holds a paramount market position." *Id.* at 1072.

77. *See generally* Ferguson, *supra* note 64 (outlining the GDR government's probable demand for firms specializing in capital equipment, the environment and telecommunications); Note, *Prospects for Western Investment: A Comparison of Joint Venture Laws in the Soviet Union, Yugoslavia and China*, 12 BOSTON C. INT'L & COMP. L. REV. 103, 140 (1989) (explaining similar Yugoslavian laws which prohibit joint venture contracts in the areas of insurance, trade and social activities and the power of the Soviet government to limit joint ventures and encourage investment in certain areas of the economy through the use of tax incentives).

78. *See* Order, *supra* note 48, § 13(1).

79. *The New Superpower*, NEWSWEEK, Feb. 26, 1990, at 20 [hereinafter *Superpower*].

willing to bear the burdens and costs to assist the less economically powerful EC members.[80] The FRG considered itself too small to bear such a burden, but a united Germany could assume this responsibility.[81]

Furthermore, as new markets open in Eastern Europe, the Germans are in an ideal position geographically and economically. Germany's location is conducive to most business and investment. Its manufacturing is weighted toward products the East needs[82] and its sales force is excellent.[83] It appears the EC is likely to promote the GDR's establishment of a market economy in Germany since the EC has stated that, "[i]f progress is to be made towards a European Community in the real sense of the words, a common market for companies is an essential part of the basic structure which must be created."[84] As the EC encourages a Western market economy in Germany, this should encourage Western businessmen to establish joint ventures in Germany.

However, the prospect of Germany as an economic superpower should not concern the United States.[85] A former West German finance official explained that if a unified Germany creates economic growth in Europe, it would benefit everyone since wealth encourages business ventures from other countries.[86] Under this theory, foreign countries who sell goods and invest in Europe will benefit from the liberal, free-trade views of Germany which will permeate the EC.[87] However, this theory does not consider that a unified Europe will possess many of its own resources and will have the potential for investment within its own extended community. In effect, this could crowd out foreign, investors, including Americans.

For the time being political change and the expected move toward a market economy in the GDR have prompted the United States to concentrate on business in the GDR.[88] Several West German firms

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80. J. BEHRMAN, *supra* note 27, at 74.

81. *Id. But see Superpower, supra* note 79, at 18-19. Estimates of the cost to bring East Germany up to West German standards range from 500 billion to 1.1 trillion Deutsche Marks ($300 billion to $650 billion). This could lead to higher taxes. *Id.*

82. *Superpower, supra* note 79, at 20. These products include machinery and industrial systems, chemicals and high-tech materials and top-quality consumer goods. *Id.*

83. *Id.*

84. R. FOLSOM, M. GORDON, & J. SPANOGLE, JR., INTERNATIONAL BUSINESS TRANSACTIONS 1000 (1986), *citing* C. Schmitthoff, *Commercial Law in a Changing Economic Climate*, BVerfG, 32 N.J.W. 699 (1979).

85. *See generally Superpower, supra* note 79, at 21 (presenting the positive effects a reunification will have on the United States).

86. *Id.*

87. *Id.*

88. Ferguson, *supra* note 64.

and East bloc companies have inquired about forming joint ventures with United States firms for East German investment.[89] Officials believe that East Germany will demand firms specializing in capital equipment, the environment, and telecommunications.[90]

V. CONCLUSION

The GDR and FRG have already begun to restructure their international economic policies, many of which affect joint ventures. The East German government is liberalizing its commercial laws to appeal to West German as well as European and United States investors. However, this metamorphosis must begin internally rather than externally.

The GDR must first discard fundamental socialist concepts like government ownership of property, control over business and restraint on the access to information, and must adopt capitalistic concepts in its place. Meanwhile, the FRG must determine how it will adapt its economy and commercial laws to meet the needs of its German counterpart. German economic reunification will demand cooperation and sacrifices on both sides.

As the two countries start to make such changes, they will answer more questions from foreign investors. Many foreign businessmen specifically will question international joint ventures. In a short time a united, westernized Germany will provide a legal environment conducive to international joint ventures.

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89. *Id.* Many German companies have realized that they may be able to partake in East German business ventures with U.S. companies although West German firms will have a geographic and linguistic advantage over the U.S. firms. *Id.*

90. *Id.* A demand for consumer goods will probably follow later.