JOINT VENTURES IN THE U.S.S.R., CZECHOSLOVAKIA AND POLAND

by

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ABSTRACT

The present thesis deals with the most significant features of joint venture legislation in three socialist countries, namely: the U.S.S.R., Czechoslovakia and Poland.

Following a historical overview of foreign trade and investment in the three jurisdictions, the current legal framework with respect to creation, operation and dissolution of joint ventures is examined ir subsequent chapters.

In this context specific points of legislation are discussed. They include: fields of permissible activity, procedure for establishment, legal structures, equity share, capital contribution, financing, management, personnel, taxation, duration and dissolution.

Under each issue a comparative analysis of the relevant legal framework currently in force in the three countries is undertaken. Furthermore, after examining the ways in which the actual mechanisms function in practice, strong and weak points of the legislation are underlined. Anticipated tendencies are assessed also.

At the end of the thesis concluding remarks, criticisms and suggestions regarding future necessary improvements are offered.

RÉSUMÉ

La présente thèse analyse les caractéristiques les plus importants de la législation des entreprises en participation* dans trois pays socialistes, à savoir l'U.R.S.S., la Tchécoslovaquie et la Pologne.

A la suite d'un aperçu historique se rapportant à l'examen du commerce extérieur et des investissements dans ces trois juridictions, nous étudions le cadre juridique actuel ayant trait à la création, l'opération et la dissolution des entreprises en participation.

Certains aspects spécifiques de la législation sont traités. Ces points comprennent: les domaines d'activités autorisées, la procédure d'établissement, les structures juridiques, la quote-part, la contribution de capital, le financement, la direction, le personnel, la taxation, la durée et la dissolution.

Chacun des points mentionnés comporte une analyse comparative du cadre juridique actuellement en vigueur dans les trois pays. De plus, après avoir examiné le fonctionnement pratique des mécanismes actuels, nous soulignons les points forts et les points faibles de la législation. Par ailleurs, les perspectives futures sont envisagées.

La conclusion de la thèse inclut des remarques générales, des critiques et des suggestions concernant des améliorations futures qui s'avèrent nécessaires.

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* NOTE: Le terme anglais "joint venture" a été traduit par l'expression "enterprise en participation"; voir infra Annexe L.

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I. INTRODUCTION

It lies beyond doubt that international trade has undergone tremendous development. It now is a dominant factor in international economic cooperation regardless of the social and political systems of the countries involved in it. Until the end of the 1960s international business transactions were primarily performed on the basis of bilateral industrial cooperation agreements. After a certain point this framework was no longer sufficient; consequently, the concept of joint ventures emerged as a necessity.

Creation of a joint venture offers something more than mere cooperation. It offers the primordial advantage of sharing between partners from different countries. This sharing involves commonly undertaken business activities and management, common programming and goals, common profits, and most of all common risks and responsibilities. The potential benefits are nevertheless great.

The focus of the present thesis will be on the legal framework for joint ventures in three major socialist countries, namely: the USSR, Czechoslovakia and Poland. We will compare specific points of legislation as regards the creation, operation and dissolution of the joint venture.

II. HISTORICAL OVERVIEW OF SOVIET, CZECHOSLOVAK AND POLISH FOREIGN TRADE

A. Early Period: The Forgotten First Joint Ventures

On April 22, 1918 the Council of the People's Commissars of the RSFSR issued a short Decree, entitled "Decree on the Nationalization of Foreign Trade."[1] Article 1 of the Decree declared that "all foreign trade is nationalized". The Decree further provided that any foreign trade activity would be carried out by state agencies under the control of the People's Commissariat of Trade and Industry.[2] After the Union of the Soviet Socialist Republics was formed in December 1922, the People's Commissariat of Foreign Trade became an All-Union one and its powers were extended to cover the entire U.S.S.R. by virtue

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1. The text of the Decree is translated in English by John Quigley and included as Appendix B in J. Quigley, The Soviet Foreign Trade Monopoly: Institutions and Laws (Columbus: Ohio State University Press, 1974) at 202, hereinafter Quigley. Reference to the text of the Decree is made as well, e.g. in W.E. Butler, Soviet Law (London: Butterworths, 1983) at 333, hereinafter Butler; and in I.I. Dore, "Plan and Contract in the Domestic and Foreign Trade of the U.S.S.R." (1987) 8 Syracuse Journal of International Law and Commerce 29 at 75, hereinafter Dore.

2. The People's Commissariat of Trade and Industry was renamed in June 1920 the People's Commissariat of Foreign Trade; see Quigley, ibid. at 3 and 22.

of the Decree of July 13, 1923.[3] Thus the whole sector of foreign trade became a state monopoly.

However, it was not to remain this way. In the early twenties, under Lenin's New Economic Policy (NEP), the idea of decentralizing foreign trade and abolishing state monopoly emerged.[4] The idea was supported at first sight by a number of Politburo members, such as Zinoviev, Kamenev, Bukharin, even Stalin, with the exception of Trotsky. However, such a policy was "almost hysterically" rejected by Lenin himself. We should not forget that it was still the era of initial revolutionary enthusiasm and Lenin considered the state monopoly of foreign trade as a weapon which would enable Russia to become an industrial power.[5] A Decree entitled "On Foreign Trade" of March 13, 1922 had however already begun to depart from the principle of monopoly: first, it allowed for direct importing and exporting by state enterprises, provincial executive committees, and all-Russian cooperatives, provided that permission for each transaction was obtained from the People's Commissariat of Foreign Trade; second - something which has been almost forgotten today - it

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3. See Butler, supra note 1 at ibid.

4. See J.F. Hough, "Attack on Protectionism in the Soviet Union? A Comment" (1986) 40 International Organization 489 at 495, hereinafter Hough.

5. See Hough, ibid.

allowed creation of the first Soviet joint ventures and organized their structure.[6] These mixed enterprises could be formed with the participation of Narkomvneshtorg[7] or its organs and of foreign enterprises either in the U.S.S.R. or abroad. The joint ventures could undertake not only export-import operations but production and supply of export goods as well.[8] The scheme proved to be very effective in practice. Thus, in 1924 the mixed companies accounted for 4.3 per cent of Soviet exports, and 4.5 per cent of imports. In 1925 there were 161 mixed enterprises. Amongst these 12 involved the participation of foreign

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6. It is interesting to note that this Decree has not been repealed; see D.A. Loeber, "Capital Investment in Soviet Enterprises? Possibilities and Limits of East-West Trade" (1977-78) 6 Adelaide Law Review 337 at 352, hereinafter Loeber.

7. Russian abbreviation of the words Narodnyi Komissariat Vneshnei Torgovli (People's Commissariat of Foreign Trade).

8. See N.N. Voznesenskaia, "Pravovye formy sovmestnogo predprinimatel'stva i praktika SSSR" (Legal Forms of Joint Undertaking and the U.S.S.R. Practice) (1985) Sovetskoe gosudarstvo i pravo (Soviet State and Law), No. 3 at 64, hereinafter Voznesenskaia 1985; see as well Quigley, supra note 1 at 27, and P. Smirnov, "Joint Ventures in the U.S.S.R. (Legal Status)" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 9 at 42, hereinafter Smirnov I. This author correctly points out that the joint ventures today "are not, strictly speaking, an entirely new form coming into use, but, we might say, the reinvigoration of the known practice of undertaking joint ventures inside the U.S.S.R.". The existence of joint ventures in the Soviet Union at that time is mentioned also in M.I. Goldman & M. Goldman, "Soviet and Chinese Economic Reform" (1987-88) 66 Foreign Affairs 551 at 564, hereinafter Goldman & Goldman.

corporations which provided approximately 20 per cent of their capital, in the total amount of 3.4 million rubles.[9]

Although it might seem unbelievable today, Stalin was not against joint ventures in the early period following Lenin's death in 1924, when he ruled the Soviet Union together with Rykov, Kamenev and Zinoviev. On August 17, 1927 a specific law on Joint Stock Companies came into force, which also regulated mixed companies through the territory of the U.S.S.R.[10]

When Stalin finally attained uncontested power in 1929, however,[11] he started imposing harsh collectivization and centralization. As a result of his general economic policy during these times, the situation abruptly changed. In 1930 the 16th Communist Party Congress ordered the liquidation of the joint stock and mixed companies.[12] In February 1930,

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9. See Loeber, supra note 6 at 344; see also Quigley, supra note 1 at 47.

10. See Loeber, ibid. at 345; see also Voznesenskaia 1985, supra note 8 at ibid.

11. See B.D. Wolfe, Three Who Made A Revolution (New York: Stein & Day, 1984) at 647.

12. It should be stressed at this point that the abolition of the first Soviet joint ventures in 1930 did not prevent Soviet state enterprises or agencies from getting involved in direct or indirect investment in developed or developing countries abroad. An elaborate study of the investment undertaken by Soviet and other Eastern European countries abroad is to be found in C.H. McMillan, Multinationals from the Second World (New York: St. Martin's Press, 1987). See as well "MNCs and Joint Ventures: Not All Are West-to- East" Business Eastern Europe (22 June 1987) 205. Two well-known (cont'd.)

30 export and import organizations with monopoly rights for a determined category of goods, called "all-union combines", replaced the abolished joint ventures, from which many of them were formed.[13] As a result, Soviet foreign trade slowly but steadily became again tightly centralized.[14] It is worth noting, however, that the 1927 Law was not repealed until 1962, after the adoption of the Fundamental Principles of Civil Law in 1961.[15]

The fundamental axiom of state monopoly of foreign trade was maintained and reinforced by Stalin through its integration into the 1936 Soviet Constitution. Today the

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examples are: the Armtorg Trading Corporation, New York; and the Moscow Narodny Bank Limited, established in 1919. Both these companies are 100 per cent Soviet owned. See J.M. Hertzfeld, "Foreign Trade" in F.J.M. Feldbrugge, ed., Encyclopedia of Soviet Law, (Dordrecht: M. Nijhoff, 1985), 2nd rev'd ed., at 324, hereinafter Foreign Trade in Feldbrugge; J. Pfeffer, "The Business Activities of State Trading Enterprises in Countries with Market Economies" (1982) 20 International Business Lawyer 124; Voznesenskaia 1985, supra note 8 at 60-62 and 64-66; and Loeber, supra note 6 at 347 as well as the bibliography contained in note 48 of Loeber's article.

13. See Quigley, supra note 1 at 62.

14. See Loeber, supra note 6 at 346; Voznesenskaia 1985, supra note 8 at 64; and Quigley, supra note 1 at 62.

15. See Voznesenskaia 1985, supra note 8 at ibid.; and Loeber, supra note 6 at ibid., note 43.

monopoly is still in force under Article 73(10) of the 1977 Soviet Constitution.[16]

On August 24, 1953 the Ministry of Foreign Trade was created. The Ministry assumed responsibility for the overall coordination of Soviet foreign trade under the Gosplan.[17] Although in the beginning the Ministry was highly centralized, little by little it vested some of its powers in other agencies. The most significant of these were the State Committee for Foreign Economic Relations, created in 1957, and the State Committee for Science and Technology, created in 1965. Besides the above Committees, the Ministry of Foreign Trade was cooperating with: the Ministry of Finance (Minfin); the State Bank (Gosbank) and the Bank for Foreign Trade (Vneshtorgbank); the All-Union Chamber of Commerce, operating the Foreign Trade Arbitration Commission and the Maritime Arbitration Commission; and the state agency for foreign insurance (Ingosstrakh).[18]

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16. See Butler, supra note 1 at 333.

17. Russian abbreviation of the words Gosudarstvennyi Plan. This is the State Planning Committee of the USSR Council of Ministers which previously had absolute control over both foreign and domestic trade and over the Soviet economy as a whole. Today under perestroika its powers are greatly circumvented.

18. See Dore, supra note 1 at 76-78. Ingosstrakh, Intourist and the USSR Bank for Foreign Trade (Vneshtorgbank) were the only legal entities, still organized as joint stock societies in 1983. Since the 1927 Law on Joint Stock Companies was repealed in 1962, as mentioned before, their legal status was thereafter (cont'd.)

The active responsibility for foreign trade transactions was conferred by the Soviet State on the Foreign Trade Organizations (FTOs).[19] The Soviet State, owner of the means of production, allocates state property to the FTOs for their operational needs. The latter operate on the basis of their proper charters and accounts, on the Khozraschet system of independent economic accountability. They mainly operate under the guidance and supervision of the Ministry of Foreign Trade or other competent ministries or state committees, depending on their field of commercial activity.[20]

That was the situation in the Soviet Union in the field of foreign trade when Mikhail S. Gorbachev became General Secretary of the CPSU in 1985.

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governed by the 1961 Fundamental Principles of Civil Law, union republic civil codes, and their respective charters; see Butler, supra note 1 at 338-339.

19. Butler uses the terms Organizations or Associations; see Butler, supra note 1 at 336. Dore, Loeber and Quigley mainly prefer the term Combines; see Dore, supra note 1 at 83, Loeber, supra note 6 at 353, and Quigley, supra note 1 at 103-120. And Hertzfeld uses the term Corporations; see Foreign Trade in Feldbrugge, supra note 12 at 325. All of the terms interprete the Russian word "ob"edineniia".

20. For instance, Soveksportfilm which is assigned the import and export of films, operates under the supervision of the Ministry of Culture; Intourist, which organizes the whole tourist activity of the country, operates under the guidance of the State Committee for Tourism; Vneshtekhnika, which deals with technology exchange and coordination, is subordinated to the State Committee for Science and Technology; and Ingosstrakh operates under the insurance division of the Ministry of Finance. See Foreign Trade in Feldbrugge, ibid.; see also Quigley, supra note 1 at 109-120.

Let us now examine the evolution of the foreign trade sector in Czechoslovakia and Poland, the two other countries under examination.

After the end of the Second World War the new communist governments of Eastern Europe followed generally the Soviet model in their effort to transform the countries.

When the Communist Party under the leadership of Klement Gottwald came into power in Czechoslovakia in 1948, it immediately nationalized the means of production and, among them, the sector of foreign trade as well.

Czechoslovakia is a federal state, comprising the Czech Socialist Republic and the Slovak Socialist Republic. Consequently, a Federal Ministry of Foreign Trade was created by Act 119/1948 on State Organization of Foreign Trade and International Forwarding.[21] This act regulated all foreign trade activities until adoption of Act 42/1980 on Economic Relations with Foreign Countries. The latter came into force on July 1, 1980 and repealed the former with the exception of the provisions concerning nationalization.[22]

The Czecholovak Federal Ministry of Foreign Trade assumes the main responsibility for the foreign trade policy

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21. See B. Klein, "Czechoslovakia" in D. Campbell, ed., Legal Aspects of Doing Business in Eastern Europe and the Soviet Union (Deventer: Kluwer, 1986) 59 at 59, hereinafter Czechoslovakia in Campbell.

22. Ibid. See as well Czechoslovak Act on Economic Relations with Foreign Countries (Prague: Czechoslovak Chamber of Commerce and Industry, 1982).

of the country. The Ministry determines the country's general trade policy according to geographical areas of the world. Its operation is organized through three departments, namely the Department of Socialist Countries, the Department of Advanced Capitalist Countries and the Department of Developing Countries. The territorial pattern of Czechoslovak foreign trade is largely witn Comecon countries (78%) with lesser levels of activity with Western countries (16%) and with Third World countries (6%).[23] Two other organs of foreign trade are the Czechoslovak Chamber of Commerce and Industry and the Arbitration Court, related to the Chamber.[24]

The same route was followed in Poland by the Polish United Workers' Party under the Presidency of Boleslaw Bierut.[25] It is interesting to note that by special provision of Article VI of the Law on Introductory Provisions of the Polish Civil Code of April 23, 1964, certain provisions of the repealed Commercial Code of June 27, 1934,

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23. See Prof. Ing. A. Bruzek, Dr. Sc., Rector of the Prague School of Economics, "The Czechoslovak Economy and the New Economic Mechanism", unpublished, in author's files.

24. See Czechoslovakia in Campbell supra note 21 at 80.

25. This is the official title of the ruling party in Poland. Its creation was the outcome of a merger which took place in December 1948 between the Polish Workers' Party - Communist Party - and the Socialist Party, both parties of the pre-war Republic of Poland.

adopted by the pre-war Republic of Poland, remain in force with respect to international trade transactions.[26]

A final point is that in the early times the new communist regimes of Czechoslovakia and Poland did not forbid the existence of joint stock corporations within the sector of foreign trade. Both countries followed the Soviet model in force during the 1920s, as described above; they estimated that it provided an effective channel for industry participation in foreign trade decisions, as has been noted by John Quigley.[27] It was only later that foreign trade export-import combines were set up. However, in Poland a few joint stock companies have remained, and in Czechoslovakia they were reinstated in the middle of the 1960s, since their legal structure proved to be effective and flexible.[28]

B. Transition form a State-to-State Bilateral Approach to a General Joint Venture Legal Framework: The Effect of Perestroika

In Eastern Europe the establishment of joint ventures was envisaged in the middle of the 1960s. The pioneer was

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26. See J. Rajski & A. Wisniewski, "Poland" in D. Campbell, ed., Legal Aspects of Doing Business in Eastern Europe and the Soviet Union (Deventer: Kluwer, 1986) 205 at 205, hereinafter Poland in Campbell.

27. See Quigley, supra note 1 at 186 and at 197, notes 54 and 55.

28. Ibid.

Yugoslavia in 1967 with Romania following in 1971, Hungary in 1972, Poland in 1976, Bulgaria in 1980, Czechoslovakia in 1985 and the Soviet Union in 1987.[29]

Joint ventures were felt necessary because the mere industrial cooperation agreements were no longer sufficient; they could not cover the expanded fields of activity. A more complex cooperation framework was felt necessary in order to: first, undertake joint production and marketing; and second, share risks and profits. In addition to that, on the one hand, the Western investors wanted to expand their activities in an almost virgin market for them, such as that of the CMEA Member-Countries;[30] on the other hand, the host countries needed advanced technology, managing skills and know-how. For the above reasons a great number of the established joint

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29. On the early joint ventures of the modern era see, e.g., C.H. McMillan & D.P. St. Charles, Joint Ventures in Eastern Europe: A Three Country Comparison (Montreal: C.D. Howe Research Institute and the Canadian Economic Policy Committee, 1974) where the authors study the conditions for joint ventures in Romania, Yugoslavia and Hungary; P. Buzescu, "Joint Ventures in Eastern Europe" (1984) 32 American Journal of Comparative Law 407, hereinafter Buzescu; and J.G. Scriven, "Co-operation in East-West Trade: The Equity Joint Venture" (1982) 10 International Business Lawyer 105.

30. CMEA stands for Council for Mutual Economic Assistance, widely known as Comecon. It was founded on January 20, 1949 in order to promote and coordinate the mutual exchange of economic experience, technology, and raw materials between its members. Member states today are the Soviet Union, Czechoslovakia, Poland, Bulgaria, Romania, the German Democratic Republic, North Korea, Cuba, Vietnam and Mongolia.

ventures came as a continuation and expansion of existing cooperation agreements.[31]

Poland was the first of the three countries under examination to enact modern foreign direct investment legislation in 1976. This was done through a cautious general framework of regulations. The scheme was rather blurred and it consisted of: first, Regulation No. 63/February 6, 1976 of the Council of Ministers "Concerning Conditions, Procedure and Organs Competent to Grant Foreign Legal and Natural Persons Authorizations to Create Offices in Poland for Purpose of Carrying on Economic Activity" which came as a result of the substantial export business undertaken by foreign firms with Poland;[32] second, Decree No. 123/May 14, 1976 of the Council of Ministers which permitted

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31. This point of view is supported, e.g. with respect to Soviet joint ventures, by the highly reliable weekly report Business Eastern Europe. More precisely, it is mentioned that "the majority of those JVs registered to date are very small or are based on existing cooperation agreements. EKE-Sadolin (Finland), Liyan (Liebherr/ Switzerland), Igirima-Tairiky (Japan) and Est-Finn (Finland) were all set up on the basis of existing cooperation agreements"; see "Soviet Joint Ventures: The Problems Thus Far", Business Eastern Europe (14 March 1988) 81, hereinafter Problems. On the functioning of industrial cooperation agreements see an early discussion in J.F. Pedersen, "Joint Ventures in the Soviet Union: A Legal and Economic Perspective" (1975) 16 Harvard International Law Journal 390 at 391.

32. See Poland in Campbell, supra note 26 at 207; see also J.G. Scriven, "Joint Ventures in Poland: A Socialist Approach to Foreign Investment Legislation" (1980) 14 Journal of World Trade Law 424 at 426, hereinafter Scriven; and J. Rajski, "Legal Aspects of Foreign Investment in Poland" in W.E. Butler, ed., Yearbook on Socialist Legal Systems (Dobbs Ferry, New York: Transnational Publishers Inc., 1986) 159 at 160, hereinafter Rajski in Butler.

wholly foreign-owned businesses in Poland but contained no provision at all on joint ventures; third, Orders Nos. 109 and 110 of the Minister of Finance/May 26, 1976 "Concerning Permits for Foreign Exchange Operations by Mixed Companies", which dealt not only with the financial aspect of mixed capital joint ventures but included regulation of their establishment, operation and dissolution.[33]

The field of activities permitted under these three legislative acts was rather restrictive and narrow. It was limited mostly to small handicraft, small scale domestic trade, and hotel, catering and other services; in sum, to small scale production sectors of the economy. As John G. Scriven correctly remarks:

> "Although foreign legal persons were also permitted to make such investment, the thrust of the legislation was to attract individuals. The requirement of a Polish resident as proxy for the foreign investor, the provisions relating to inheritance of the assets invested and the use of the Polish Savings Bank (Bank Polska Kasa Opieki S.A.) rather than the Polish Foreign Trade Bank (Bank Handlowy) demonstrates this intention."[34]

Moreover, although the above enactments gave the joint venture possibility a passing mention, joint ventures remained inoperative, since no working regulations were implemented to make them active.[35] This was due to

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33. See Scriven, ibid.

34. See Scriven, ibid. at 426-427.

35. See M.F.H. Arnoldi, Western Investment in Poland (1976-1986) (Ottawa: 1987) (unpublished thesis, on deposit at Carleton University Library) at 28, hereinafter Arnoldi.

theoretical controversies over the issue whether foreign investment as such should be allowed or not. The view of the opponents to such an opening prevailed at the time. It is obvious that this scheme enabled the Polish State to keep out of socialized sectors of the economy these new forms of activity; and at the same time to eliminate small individual owners much more easily - if such a need occurred - than eventually a branch of a multinational company.[36]

The main goal of the legal enactments was to attract Polonian private direct investment.[37] Poland was the

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36. It should be added at this point that domestic trade as well had been recently regulated by the Act of July 18, 1974 "Concerning Carrying on of Commerce and Some Other Kinds of Economic Activity by Units of Non-Socialized Economy"; see Poland in Campbell, supra note 26 at 207. This notion of "units of non-socialized economy" "usually covers private national small industry and trade as well as foreign nationals and foreign legal persons"; see ibid. The existence of an important private - non-socialized - sector of the economy is a significant characteristic of post-war Poland: it is explicitly stated that "individual family farms dominate agriculture"; see "National Economy: in Poland 1988: A Guidebook (Warsaw: Polish Press Agency PAP) 76 at 77; see also A. Fontaine, "Une question à Gorbatchev et à quelques autres", Le Monde (10 July 1987) 1.

37. The term Polonian is interpreted by the Polish authorities as comprising "individuals of Polish origin who have maintained more or less their links to the Polish nation and culture ... maintained traditions rooted in their Polish origin reveals interest in Polish culture and shows an understanding for the Polish national interests"; see Arnoldi, supra note 35 at 28. It is estimated that 10-18,000,000 Poles live in countries outside Poland. One could mention famous (cont'd.)

first socialist country to make explicit recourse to its expatriates living abroad, principally in Canada, in the United States of America and in countries of the European Community, in order to seek their investment capital.[38]

Three years later, in 1979, a second attempt to attract foreign investment was introduced in the form of Resolution 24/February 7, 1979 of the Council of Ministers "On Establishing Business Enterprises with Foreign Capital Participation in Poland and their Operation". This regulation of foreign direct investment primarily concerned definition of the legal framework for operating joint ventures. Unfor-

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cases, e.g. Zbigniew Brzezinski, National Security Advisor of U.S. President Carter, and Michel Poniatowski, Minister of Internal Affairs of France during the seven-year Presidency of Valéry Giscard d'Estaing (1974-1981).

38. In 1972 the Polish government formed the Polonia society, and later the Polish-Polonian Chamber of Industry and Commerce, in order to strengther the cultural and commercial links of émigrés to the "old country". It was estimated that their emotional attitude, arising out of common culture, language and religion, would render them sympathetic and adaptable to the peculiarities of Poland. This had been proved earlier when they helped Poland after this country in 1947, together with Czechoslovakia, rejected any form of American economic assistance under the Marshall Plan, as advised by Stalin, shortly before the creation of Comecon; see J. Tagliabue, "Poland Rejects Notion of Another "Marshall Plan", The New York Times (24 May 1988) A11. Furthermore, Polish investors would help their country and would be less likely to exploit members of their own nationality or criticize state policies; see Arnoldi, supra note 35 at 29-30 and at 51. This appears to be the main reason why in a later stage the Law of July 6, 1982 was adopted; see infra.

tunately, though, it appeared to be much more complicated, detailed and restrictive than the previous one.[39]

The most problematic provisions of the combined 1976 and 1979 regulations were the limited life of the joint venture - up to 15 years in total - and the complicated scheme of profit repatriation which constituted a stumbling block. Even a Polish foreign trade official admitted that the old regulations "contained more injunctions and restrictions than they did incentives".[40]

Because of these difficulties, the Law of July 6, 1982 "On Principles of Conducting an Economic Activity in Small Industry by Foreign Corporate Bodies and Natural Persons in the Territory of the Polish People's Republic"[41] was enacted. The Law has a narrow scope. It is concerned in particular with the increase of production and services for the domestic market and for export. It aims at attracting capital investment from Polonians in principle, but also from

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39. See Rajski in Butler, supra note 32 at 160.

40. Statement contained in "Poland Eases JV Law, Invites Foreign Investment", Business Eastern Europe (18 June 1982) 197.

41. See the text of the Law as amended in 1983 and 1985: "The Law of July 6, 1982 on Principles of Conducting an Economic Activity in Small Industry by Foreign Corporate Bodies and Natural Persons in the Territory of the Polish People's Republic", Dziennik Ustaw (Journal of Laws), No. 13 (5 April 1985) in (1985) Inter-Polcom (Polish Information Magazine), No. 4/39 at 15, included infra as Appendix F, hereinafter 1982 Law.

other foreigners.[42] It sets no limit whatsoever on foreign capital participation. Consequently, enterprises undertaken under its provisions can be wholly foreign-owned.[43] The Law was amended in 1983 and 1985, and is still in force.

Finally, on April 23, 1986 the Law "On Companies with Foreign Capital Participation" was adopted.[44] This Law's scope covers every aspect of investment, save that covered by the 1982 Law. In other words, it covers large-scale industry and services, and is export-oriented.

Thus, Poland is a country having two parallel legal régimes with respect to international joint ventures, depend-

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42. The Law creates the Polish-Polonian Chamber of Industry and Commerce to promote Polonian investment; see Article 5, Paragraphs 1 and 2 the 1982 Law, infra Appendix F; see also supra note 38; and Buzescu, supra note 29 at 422.

43. See Article 1, Paragraph 2 of the 1982 Law, infra Appendix F.

44. See the text of "The Law of April 23, 1986 on Companies with Foreign Capital Participation in the Polish People's Republic", Dziennik Ustaw (Journal of Laws), No. 17, Item 88 (1986) in A. Burzynski, A Foreign Investor's Guide to the Law of 23rd April 1986 (Warsaw: Information and Legal Aid Centre, Polish Chamber of Foreign Trade, 1986) at 13; reprinted also in United Nations Economic Commission for Europe, East-West Joint Ventures: Economic, Business, Financial and Legal Aspects (New York: United Nations Publications, 1988) at 162, hereinafter ECE; included infra as Appendix G, hereinafter 1986 Law. A general comment on the Law is to be found in J. Rajski, "La nouvelle loi polonaise sur les sociétés à participation étrangère" (1987) Revue de Droit des Affaires Internationales No. 2/217.

ing on the level and field of activity.[45] In the following chapters we will study and compare specific aspects of both laws.

The general process of decentralization and reduction of the size of the central administration is continuing in Poland. It was felt that too many ministries existed. It has been officially stated that the number of ministers, deputy ministers, secretaries and deputy secretaries of state was 194 in October 1987.[46] Consequently, a number of ministries had to be abolished or restructured so that the size of central administration would be reduced and would become more flexible. As a result of this reform, which took place at the end of 1987, the Ministry of Foreign Trade was abolished and the new Ministry of Foreign Economic Cooperation was created under Wladyslaw Gwiazda, effective

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45. It was argued that the 1982 Law is not a true international joint venture one, since its target is in principle Polonians; see E.C.E., ibid. at 25-26. Yet, the scope of this Law allows a wider acceptance of foreign investors than the initial Polonian character of the 1976 regulations; see Arnoldi, supra note 35 at 50-51. Accordingly, a number of foreign non-Polonian enterprises were permitted under the 1982 Law. For example, Michael F.H. Arnoldi refers to the extreme case of an enterprise named Ilori involving Polonians, a Soviet citizen and an Englishman; see Arnoldi, ibid. at 66.

46. See G.B., "Pologne: un nombre considérable de bureaucrates devraient être licenciés", Le Monde (9 October 1987) 8.

as of January 1, 1988. The new Ministry was assigned the task of promoting joint ventures.[47]

In Czechoslovakia joint ventures have never been formally banned in the past. There are actually a few foreign companies which have survived since the pre-war years.[48] Moreover, there is even a relevant provision for mixed enterprises in the Czechoslovak International Trade Code of 1963.[49] However, foreign partners were not given an opportunity to utilize this mechanism and, consequently, this form of activity was simply not in use. Bilateral industrial cooperation agreements prevailed until August 1985, when the "Principles Governing the Establishment of Joint Companies Consisting of Czechoslovak Corporations and Companies from Non-Socialist Countries" were enacted.[50]

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47. See W. Gwiazda, "Les joint ventures dans l'économie polonaise" in La Pologne contemporaine, numéro spécial, Les joint ventures en Pologne (Warsaw: Polish Agency Interpress, 1988).

48. See B. Fedorov, "Joint Enterprises with Participation of Western Companies in Socialist Countries" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 2 at 15.

49. Act 101/1963 on Legal Relations in International Commercial Relations; see B. Klein, Joint Ventures in Czechoslovakia (Prague: Czechoslovak Chamber of Commerce and Industry, 1987) at 3 and 19, hereinafter Klein. Articles 2 and 625 of the Code provide that native and foreign persons can undertake to "unite" their activity or assets to attain a certain economic purpose"; see Loeber, supra note 6 at 349.

50. See the text of the "Principles Governing the Establishment and Activities of Joint Companies Consisting of Czechoslovak Corporations and Companies from Non-

(cont'd.)

It is worth noting that the Principles are a collection of provisions of individual rules of law dispersed in different Czechoslovak Acts and Decrees. This legal framework is insufficient as such and constitutes the weakest form of legal regulation. Moreover, the governmental decision enacting the Principles is not a generally binding legal instrument, and the use of existing rules of law, which were not enacted with the special purpose of enabling the creation of joint ventures, is unsuitable. On the other hand, there is an advantage in this legal framework, which consists of the rather large space left for the parties to negotiate and agree upon the basic founding documents, in view of the specific character of the case.[51]

The Soviet Union started rather late to envisage the enactment of legislation explicitly permitting joint ventures with capitalist countries. As Ross B. Leckow had accurately remarked in this context before implementation of the new legal régime:

> "The crucial precondition for the introduction of joint ventures in the U.S.S.R. remains a change in the Soviet leadership's world view, one which presently sees Western involvement

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Socialist Countries" in B. Klein, Joint Ventures in Czechoslovakia (Prague: Czechoslovak Chamber of Commerce and Industry, 1987) at 13; reprinted also in E.C.E., supra note 44 at 142; included infra as Appendix E, hereinafter 1985 Principles.

51. See Klein, supra note 49 at 4-5; see also the text of a conference, given in Canada last year by F. Fisera, Secretary General, Czechoslovak Chamber of Commerce and Industry, "Joint Ventures in Czechoslovakia", unpublished, in author's files, hereinafter Fisera.

> as Western interference, foreign participation as foreign domination."[52]

Thus, major reforms were undertaken only after Mikhail S. Gorbachev became Secretary General of the CPSU and started implementing the famous concept of perestroika. So, the joint ventures should be understood as a part of the general context of perestroika as a whole.[53]

As a result of the gradual loosening of administrative control and of the implemented decentralization of the economy, the first measures concerning joint ventures were adopted in 1986. They consisted of two Resolutions of the CPSU Central Committee and of the Council of Ministers of the U.S.S.R "On Measures to Improve the Management of Foreign Economic Relations" and "On Measures to Improve the Management of Economic, Scientific and Technical Cooperation with

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52. See R.B. Leckow, Doing Business with the Soviets: The Legal Structure of Canadian-Soviet Trade (Toronto 1986) (unpublished LL.M. thesis on deposit at York University Library) at 100.

53. In his largely known book, Mikhail S. Gorbachev stresses "the need for a radical reform of the economic mechanism and for restructuring the entire system of economic management". Furthermore, he insists that "the task now in hand is to bring the new machinery of economic management in full operation competently and without delay"; see M.S. Gorbachev, Perestroika: New Thinking for Our Country and the World (New York: Harper & Row, Publishers, 1987) at 83 and 88. In fact, Gorbachev, who had been Andropov's protégé, in reality continued and enhanced what Andropov himself had started by commissioning several studies looking at possible economic reform. Andropov's attempts were left unfinished due to his late age, illness and finally death; see Goldman & Goldman, supra note 8 at 559.

Socialist Countries".[54] The two Resolutions contained two provisions of utmost importance.

First, they created a new body at the ministerial level, the State Foreign Economic Commission of the U.S.S.R. Council of Ministers.[55] This new body assumed the supervision and coordination of the work of all organizations involved in the sphere of foreign trade. Among them were: the Ministry of Foreign Trade; the State Committee for Foreign Economic Relations; the State Committee for Foreign Tourism; the Bank for Foreign Trade of the U.S.S.R.; and the State Customs Administration of the U.S.S.R. Council of Ministers.[56]

Second, for the first time in the modern era, they contained guidelines for the creation of joint ventures with capitalist countries.

Vladimir M. Kamentsev, Deputy Chairman of the U.S.S.R. Council of Ministers, was appointed Chairman of the new Commission. Ivan D. Ivanov, one of the Deputy Chairmen of

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54. See the complete text of the two Resolutions in (1987) Foreign Trade (English edition of Vneshniaia Torgovlia) Supplement to No. 5 at 2-5 and 5-9, hereinafter Resolutions. A comment on the Resolutions is to be found in K.M. Dunn, "The New Soviet Joint Venture Regulations" (1987) 12 North Carolina Journal of International Law and Commercial Regulation 172, hereinafter Dunn.

55. See "Two Years of Gorbachev: What's Ahead for Trade?", Business Eastern Europe (18 May 1987) 153-154.

56. See Resolutions, supra note 54 at 2.

the Commission, is the Soviet trade official identified as the architect of the new legal framework.[57]

Another very important decentralizing change installed by the Resolutions and implemented as of January 1, 1987 was the granting of foreign trade rights to 23 ministries and 80 leading associations and enterprises of the country.[58] Although the total number of enterprises is some 45,000, it was a beginning. Thus the omnipotent monopoly of the Ministry of Foreign Trade was greatly circumvented, in accordance with a major aim of the Soviet foreign trade reform to put Soviet enterprises in direct touch with Western markets.[59]

The 1986 Resolutions and their guidelines regulating joint ventures served as a kind of barometer in order to

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57. See F. Barringer, "To Russia, for Partners and Profits", The New York Times (10 April 1988) Section 3, 1 at 13. Ivan D. Ivanov is not only the uncontested father of the 1986 Resolutions, but the father of the three Decrees of January 13, 1987 as well; see also "No Rush Into Russia", The Economist (7 February 1987) 65.

58. See V. M. Kamentsev, Economic Ties, a Prerequisite of Lasting Peace (Moscow: Novosti Press Agency Publishing House, 1988) at 6; see also "Soviet Trade Reform: Change, With Confusion", Business Eastern Europe (23 February 1987) 57.

59. See "Soviet Decentralization Makes More Work for Firms", Business Eastern Europe (5 October 1987) 315. At this point it should to be added that besides the organizations having direct foreign trade rights a much larger number of them has hard-currency retention rights, although they still operate through FTOs. This constitutes a factor of primordial interest for Western businessmen; see "Soviet Trade Reforms: Who Holds the Hard Currency?", Business Eastern Europe (6 April 1987) 108.

assess foreign businessmen's reactions in view of the Decrees to come.[60]

Three new Decrees were enacted on January 13, 1987, retroactive as of January 1, 1987. More precisely these were: first, Decree No. 6362-XI of the Presidium of the U.S.S.R. Supreme Soviet "On Questions Concerning the Establishment in the Territory of the U.S.S.R. and Operation of Joint Ventures, International Amalgamations and Organizations with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies":[61] This Decree regulates a number of general issues, such as lease of land, taxation and settlement of disputes. These issues should be regulated by the Presidium of the U.S.S.R. Supreme Soviet due to their

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60. See R.H. Carpenter, Jr. & B.L. Smith, "U.S.-Soviet Joint Ventures: A New Opening in the East" (1987) 43 Business Lawyer 79 at 80, hereinafter Carpenter & Smith.

61. See the text of the Decree No. 6362-XI/January 13, 1987 of the Presidium of the USSR Supreme Soviet "On Questions Concerning the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), Supplement No. 5 at 10; reprinted also in E.C.E., supra note 44 at 182; reprinted also in United Nations Centre on Transnational Corporations, Joint Ventures as a Form of International Economic Cooperation (New York: United Nations Publications, 1988) at 145, hereinafter UNCTC; included infra as Appendix A, hereinafter Decree 6362; reference to the Decree was made as well in "V Presidiume Verkhovnogo Soveta SSSR", Pravda (27 January 1987) 1; and in "V Presidiume Verkhovnogo Soveta SSSR" (1987) Ekonomicheskaia Gazeta No. 6 at 15.

constitutional character; second, Decree No. 48 of the U.S.S.R. Council of Ministers "On the Establishment of the Territory of the U.S.S.R. and Operation of Joint Ventures, International Amalgamations and Organizations of the U.S.S.R. and other CMEA Member-Countries";[62] and third, Decree No. 49 of the U.S.S.R. Council of Ministers "On the Establishment in the Territory of the U.S.S.R. and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries".[63] Thus,

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62. See the text of the Decree No. 48/January 13, 1987 of the USSR Council of Ministers "On the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations of the USSR and other CMEA Member-Countries" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), Supplement to No. 5 at 10-15, included infra as Appendix B, hereinafter Decree 48. The original Russian text of the Decree was published in Pravda; see "V Sovete Ministrov SSSR: O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriiatii, mezhdunarodnykh ob"edinenii i organizatsii SSSR i drugikh stran - chlenov SEV", Pravda (27 January 1987) 1. It was published as well in Ekonomicheskaia Gazeta; see "V Sovete Ministrov SSSR: O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriatii, mezhdunarodnykh ob"edinenii i organizatsii SSSR i drugikh stran - chlenov SEV" (1987) Ekonomicheskaia Gazeta No. 6 at 15-16. This is not an unofficial version of the 1986 Resolutions as maintained by Butler; this is the official text of Decree 48 of January 13, 1987 as it is explicitly mentioned in its beginning; see infra notes 67 and 63.

63. See the text of the Decree No. 49/January 13, 1987 of the USSR Council of Ministers "On the Establishment in the Territory of the USSR and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), Supplement No. 5 at 16-19; reprinted also in E.C.E., supra note 44 at 183; reprinted also in UNCTC, (cont'd.)

the Soviet Union became the first socialist country to opt for separate legal régimes with respect to joint ventures, depending on the country involved. We will compare the different approaches of the two Decrees with respect to specific issues in subsequent chapters of the present thesis during our analysis of specific points of joint venture legislation in the three countries under examination. It should be mentioned at this point that joint ventures with other CMEA Member-Countries were already operating since May 26, 1983.[64]. That appears to be a reason for differen-

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supra note 61 at 146; included infra as Appendix C, hereinafter Decree 49. The original Russian text of the Decree was publised in Pravda; see "V Sovete Ministrov SSSR: O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriiatii s uchastiem sovetskikh organizatsii i firm kapitalisticheskikh i razvivaiushchikhsia stran", Pravda (27 January 1987) 2. It was published as well in Ekonomicheskaia Gazeta; see "V Sovete Ministrov SSSR: O poriadke sozdaniia na territorii SSSR i deiatel'nosti sovmestnykh predpriatii s uchastiem sovetskikh organizatsii i firm kapitalisticheskikh i razvivaiushchikhsia stran" (1987) Ekonomicheskaia Gazeta No. 6 at 17-18. Again this is not an unofficial version of the 1986 Resolutions as supported by Butler; this is the official text of Decree 49 of January 13, 1987 as it is explicitly mentioned in its beginning; see infra note 67 and supra note 62.

64. Paragraph 65 of Decree 48 annuls the pre-existing Decree No. 464 of May 26, 1983 of the USSR Council of Ministers "On the Revision Procedure for Proposals Regarding the Establishment of Joint Economic Ventures of the USSR and other CMEA Member-Countries in the Territory of the USSR", but Paragraph 3 of same maintains in power the Decree of May 26, 1983 of the Presidium of the USSR Supreme Soviet "On the Operation in the Territory of the USSR of Joint Economic Organizations of the USSR and other CMEA Member- Countries" on a level parallel to the new Decree; see Paragraphs 3 and 65 of Decree 48, infra Appendix B.

tiating the legal régimes in 1987. It should also be recalled that a number of specific measures and procedures have been already undertaken by CMEA Member- Countries, aiming at an intra-Comecon integration. The joint ventures in question are regulated and financed by special Comecon institutions, such as the International Bank for Economic Cooperation and the International Investment Bank.[65] Integration within Comecon itself is undertaken under the guidelines of the 15-year "Comprehensive Program of the CMEA Member-Countries' Specific and Technological Progress up to the year 2000" which was adopted in 1985.[66]

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65. On cooperation inside Comecon, see, e.g., V. Sychev, "CMEA: Radical Changes to the Cooperation Mechanism" (1988) Foreign Trade (English edition of Vneshniaia Torgovlia) No. 2 at 5, hereinafter Sychev; Y. Kozhin & V. Kuvshinov, "Foreign Trade Aspects of Direct Ties Between Organizations of the CMEA Countries" (1988) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 6 at 2-4, hereinafter Kozhin & Kuvshinov; V. Durnev, "CMEA Countries' Joint Ventures" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 6 at 11-15, hereinafter Durnev; "Comecon Bank Will Support Major Investment Projects", Business Eastern Europe (30 May 1988) 171, hereinafter International Investment Bank.

66. On the 15-year "Comprehensive Program of the CMEA Member-Countries' Scientific and Technological Progress up to the Year 2000" and its Implementation see Sychev, ibid. at 2; Kozhin & Kuvshinov, ibid. at 2; Durnev, ibid. at 11; see also "Comecon Cooperation: So What Else Is New?", Business Eastern Europe (1 December 1986) 377 at 377-8; and "Soviets Set Up Institutes to Coordinate EE Research", Business Eastern Europe (29 September 1986) 308.

The Decrees were given wide publicity in the West, though unfortunately insufficient. One of the first to translate them was William E. Butler. Butler translated only two of the three Decrees, however: Decree 6362 and Decree 49.[67] In his introductory note[68] he does not refer to Decree 48 and he omits to deal with it. Furthermore, in his translations, he uses a terminology which is completely different from that of the official Soviet translations.

For instance, William E. Butler uses the term "joint enterprise" instead of that widely used in the West "joint venture". He considers the term "joint venture" inaccurate. That is partly true. The translation of the original Russian term "sovmestnoe predpriiatie" is "joint enterprise" in English. However, we believe that the term "joint venture"

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67. See William E. Butler's translation of Decree 49: "Union of Soviet Socialist Republics: Decree on Joint Enterprises with Western and Developing Countries" (1987) 26 International Legal Materials 749; and that of Decree 6362: "Union of Soviet Socialist Republics: Edict Concerning Taxation of Joint Enterprises in the Soviet Union and Dispute Settlement", ibid. at 759. Because of this, most of the Canadian and American literature on Soviet joint ventures has been studying up to now only Decree 6362 and Decree 49, and not Decree 48; see, e.g., Carpenter & Smith, supra note 60; K. Ross, "Foreign Investment: New Soviet Joint Venture Law" (1987) 28 Harvard International Law Journal 473; J.A. Cohen, "A China- Watcher's Impressions of the Soviet Joint Enterprise Legislation" in W.E. Butler, P.B. Maggs & J.B. Quigley, Jr., eds., Law After Revolution (New York: Oceana Publications, 1988) 163 at 167, hereinafter Cohen; and E.P. Mendes, "The Soviet Union: Open for Business?" 1 Review of International Business Law 357. The last two authors even use the term "joint enterprise" preferred by Butler; see infra the discussion on terminology.

68. Ibid. at 749.

was accurately used in the official Soviet translation for the following two reasons: first, "venture" comes as a translation of the term "riskovannoe predpriiatie". We are of the opinion that in this case the adjective "riskovannoe" - "risky" is implied; for what are the joint ventures if not enterprises where the notions of sharing both risk and capital are predominant for all parties involved?

Second, the English term "joint venture" is even widely used in Russian in unchanged form: "dzhoint venchur".[69]

In support of our view it is noteworthy that the United Nations Economic Commission for Europe in its recent book East-West Joint Ventures: Economic, Business, Financial and Legal Aspects published in April 1988 uses the official Soviet translation and not those published in International Legal Materials.[70]

Because of all the above reasons we will make use of the official Soviet translations when referring to specific points of the Decrees in the subsequent chapters of the thesis.

After the initial operating period of the first joint ventures, a number of problems occurred in practice. We will

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69. See, e.g., Voznesenskaia 1985, supra note 8 at 61, 63 and 65.

70. See E.C.E., supra note 44 at 182, 183 and 188. It should be mentioned that, although the E.C.E.'s study examines Decree 48 and compares it with Decree 49, - see E.C.E., ibid. at 15 - it does not include the text. We will include it infra as Appendix B.

deal with them in the following chapters. The Soviets reacted flexibly and in favor of adequate modifications.[71] Consequently, on September 17, 1987 a first step was made: the new Decree 1074 was adopted by the CPSU Central Committee and the U.S.S.R. Council of Ministers "On Additional Measures to Improve the Country's External Economic Activity in the New Conditions of Economic Management".[72]

During a recent stage another important change took place, aiming at reducing bureaucracy: The Ministry of

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71. Ivan D. Ivanov, Deputy Chairman of the State Foreign Economic Commission and architect of the new legislation - see supra note 57 - when addressing Western businessmen in early September 1987 welcomed their constructive criticism and comments. He recognized that problems do exist and assured that every suggestion or opinion is carefuly examined; see "Soviets Move to Counter Trade Reform Disruptions", Business Eastern Europe (14 September 1987) 291.

72. See excerpts of the Decree No. 1074/September 17, 1987 of the CPSU Central Committee and the USSR Council of Ministers "On Additional Measures to Improve the Country's External Economic Activity in the New Conditions of Economic Management" in E.C.E., supra note 44 at 189, included infra as Appendix D, hereinafter Decree 1074. More extended excerpts of the Decree as relevant to the establishing and operation of joint ventures were published in UNCTC, supra note 61 at 173. The original Russian text was published in Ekonomicheskaia Gazeta; see "V Tsentral'nom Komitete KPSS i Sovete Ministrov SSSR: O dopolnitel'nykh merakh po sovershenstvovaniiu vneshneekonomicheskoi deiatel'nosti v novykh usloviakh khoziaistvovaniia" (1987) Ekonomicheskaia Gazeta No. 41 at 18-19. The official English translation of the entire Decree was published in Foreign trade; see "On Additional Measures to Improve the Country's External Economic Activity in the New Conditions of Economic Management" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 12 at 2-6. See also the official announcement of the Decree: (cont'd.)

Foreign Trade together with the State Committee for Foreign Economic Relations were abolished. In their place the new All-Union Ministry of Foreign Economic Relations was created in January 1988.[73] Konstantin F. Katushev, previously head of the State Committee for Foreign Economic Relations, was appointed as the new Minister.[74] This restructuring was felt necessary for, as it was remarked, "the second wave of perestroika leaves no room for intermediate organizations and multiple layers of administration. The "two-level" system now favored by the top Soviet leadership aims to make ministries and their enterprises directly responsible for their own results".[75]

The general legal framework of foreign trade and joint ventures has evolved in this manner from the October Revolution until today in the three countries under study in

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"V Politbiuro TS.K. KPSS", Pravda (18 September 1987) 1; and "V Politbiuro TS.K. KPSS", Izvestiia (19 September 1987) 1. For a detailed Western comment of the Decree, see "Soviets Introduce Broad Changes to JV Regulations", Business Easterr Europe (19 October 1987) 331.

73. See the ofifical announcement "V Presidiume Verkhovnogo Soveta SSSR", Izvestiia (17 January 1988) 1.

74. Ibid. The announcement was published also in the beginning of the February issue of Foreign Trade; see "In the Presidium of the USSR Supreme Soviet" (1988) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 2 at 1.

75. See "Official: Soviets Drop Foreign Trade Ministry", Business Eastern Europe (25 January 1988) 27; see also "Soviet Trade Reform: More Disruptions Ahead", Business Eastern Europe (18 January 1988) 17, and note 58 supra.

the present thesis. We may now examine specific approaches of current legislation as regards the creation, operation and dissolution of joint ventures.

III. CREATION OF THE JOINT VENTURE

A. Fields of Activity: Undetermined, Limited or Restricted?

A first question relates to the fields in which joint ventures may operate. In the three countries one may discern a general approach as regards "barriers to access", which is rather pragmatic, liberal, and based on economic factors.[76]

Soviet legislation is the most liberal of the three countries under study. More specifically, Decree 49 does not define the activities which can be carried out by East-West joint ventures on Soviet soil. Consequently, proposals can be submitted in any field. However, the first paragraph of Decree 49 mentions as a prerequisite the authorization required for establishment, and it is obviously understood that the Soviet state thereby can ultimately control the proposed fields of operation through the device of withholding permission.[77]

Decree 48 contains a slightly different provision. Its Paragraph 2 contains a list of the fields of activity in which a CMEA joint venture may be engaged. These include

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76. See E. Piontek, "The Legal Regime of Foreign Direct Investment in Socialist Countries" in W.E. Butler, ed., Yearbook on Socialist Legal Systems (Dobbs Ferry, New York: Transnational Publishers, 1987) 279 at 329, hereinafter Piontek.

77. See Paragraph 1 of Decree 49, infra Appendix C.

"production, scientific production, scientific, technological and other economic activities in industry, science, agriculture, construction, trade, transportation and other fields of the national economy".[78] This enumeration of common fields can be understood as an incarnation of the intra-Comecon integration aimed at by its Member-Countries.[79] This enumeration appears not to be exclusive. It is rather indicative. The latter conclusion derives from the words "and other fields of the national economy". This phrasing confers discretion upon state authorities and enables them to accept any proposal considered beneficial and fruitful for all of the involved parties.

The Polish approach is more restrictive than the Soviet one. The scope of application of the 1982 Law is evidently narrow, as may be seen from its title. It concerns solely "small industry".

The Law does not define the term "small industry". It instead uses an indirect approach. Under Article 6 "Whenever the Law mentions: 1) Polish economic units, it means: a) small state industrial enterprises, b) social organizations entitled to conduct an economic activity on the grounds of other regulations, c) cooperatives, d) unions of producers

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78. See Paragraph 2 of Decree 48, infra Appendix B.

79. See also supra Chapter II, Section B and notes 65 and 66.

and domestic enterprises active in small industry, e) persons entitled to conduct handicraft or other economic activity on the grounds of other regulations, f) private persons undertaking economic activity jointly with foreign economic units".[80] Furthermore, under Article 2 of the 1982 Law "the economic activity in the sphere of small industry may consist in: 1) production of commodities or granting of services, 2) trade, 3) export of own products or services or import for own use in production or service activity".[81] In addition to this provision, E. Piontek adds, "the production scale of "small industry" may be considered, as may be employment. Of nearly 700 foreign enterprises operating in Poland under the "System of 1982", the majority have 100 to 300 employees".[82]

The regulation of the 1986 Law is different. By virtue of Article 41 its application is prohibited with respect to those companies which would normally be governed by the 1982 Law.[83] Therefore, its scope covers a contrario "large industry" in general. However, a number of fields of

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80. See Article 6 of the 1982 Law, infra Appendix F.

81. See Article 2 of the 1982 Law, infra Appendix F.

82. See Piontek, supra note 76 at 289. See also J. Rajski, "Le nouveau régime juridique des petits investissements étrangers en Pologne" (1985) Revue de Droit des Affaires Internationales", No. 2/217 at 218, hereinafter Rajski 1982.

83. See Article 41 of the 1986 Law, infra Appendix G.

activity are explicitly excluded by this Law and no permit will be granted for the activities of: "defence, rail transport, air transport, communications, insurance, publishing - excluding the printing industry -, and foreign trade agency".[84] Still, the Minister of Foreign Economic Cooperation[85] has the power in particularly justifiable cases, after agreement with the Minister concerned, to deviate from this prohibition.[86] As we can see, the approach here remains open, but is more restrictive than the approach of Soviet legislation.

The most restrictive approach is that undertaken by the 1985 Czechoslovak Principles, which adopt a different method. Instead of prohibiting certain fields they determine the specific fields of permissible activity. As Bohuslav Klein points out, "originally the parties were allowed to establish common ventures only in the field of industrial production. There were many who thought this restriction unwarranted, feeling that particularly the sphere of services (transport, touristic, etc.) would need the same promotion as industrial production. Our government took these views into

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84. See Article 7, Paragraph 1 of the 1986 Law, infra Appendix G.

85. The 1986 Law uses the term Minister of Foreign Trade, but henceforth in this article we will be using the name of the new Ministry as applicable since January 1, 1988; see supra Chapter II, Section B.

86. See Article 7, Paragraph 2 of the 1986 Law, infra Appendix G.

consideration and since February 1, 1987, allowed the principles to be applied also in the sphere of tourism".[87] If we take into consideration as well the phrasing of Chapter I, Section 1 of the 1985 Principles - "only in the field of industrial production (of the Czechoslovak national economy) and in the sphere of tourism"[88] - we can draw the conclusion that the Czechoslovak approach is beyond doubt the most restrictive of the three countries as regards the fields of activity of joint ventures.

B. Administrative Procedure for Authorization and Establishment

1. Issuing of Permits, Registration and Publications

After determining the fields of activity of the joint ventures, the next issue is the procedure to be followed in order to establish the joint venture as a distinct legal entity. The first step is the granting of an official authorization by the competent authorities of the host country and, subsequently, there must be registration of the formal existence of the new legal entity under a specific administrative procedure.

Every socialist country requires both application for a permit and registration in order to allow establishment of a

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87. See Klein, supra note 49 at 5.

88. See Chapter I, Section 1 of the 1985 Principles, infra Appendix E.

joint venture. This is due to the prevailing conception that the joint venture constitutes an exceptional entity within the framework of the state planned economy and state ownership of the means of production . Therefore, the State has the last word in approving given forms of investment participation by a foreign legal or natural person.

In the Soviet Union, initially, the U.S.S.R. Council of Ministers could approve or reject a proposal at its discretion. Now, by virtue of Decree 1074, this is the task of the ministries and departments of the U.S.S.R. and the Councils of Ministers of the 15 Union Republics.[89] This change came as a result of the decentralizing procedures gradually implemented in the country.

Apparently, the local partner no longer has the obligation to obtain the advice of the U.S.S.R. State Planning Committee,[90] the U.S.S.R. Ministry of Finance and other ministries and government agencies concerned.[91] However,

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89. See Decree 1074, infra Appendix D.

90. On the Gosplan see also supra note 17.

91. This opinion is maintained by Ninel N. Voznesenskaia; see N.N. Voznesenskaia, "Sovmestnye predpriiatiia s uchastiem firm kapitalisticheskikh i razvivaiushchikhsia stran na territorii SSSR" (Joint Ventures with the Participation of Firms from Capitalist and Developing Countries in the Territory of the USSR) (1988) Sovetskoe gosudarstvo i pravo (Soviet State and Law), No. 1 at 12, hereinafter Voznesenskaia 1988. The obligation to obtain a preliminary advice was a mandatory requirement (cont'd.)

it has been stated that "obviously granting of this right does not relieve them of the need to coordinate their actions with other governmental agencies and (or) apply to the U.S.S.R. Council of Ministers whenever this or that particular question is within the latter's competence".[92]

The procedure to be followed is practically the same under Decrees 48 and 49 with respect to joint ventures. More specifically, under Paragraph 4 of Decree 48 and Paragraph 2 of Decree 49, the Soviet party submits the application accompanied by a feasibility study, an establishment proposal and draft foundation documents.[93]

As soon as the foundation documents are signed, the joint venture is to be registered with the Ministry of Finance. It is expressly stipulated that the joint venture acquires the rights of a legal entity only at the time of registration.[94] This provision has created a number of interpretation issues with respect to the legal status of the

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under the initial form of Decrees 48 and 49; see Paragraph 4 of Decree 48, infra Appendix B, and Paragraph 2 of Decree 49, infra Appendix C.

92. This interpretation is supported by P. Smirnov in Vneshniaia Torgovlia; see P. Smirnov, "Joint Ventures on Soviet Territory: First Agreements and the Development of Legal Regulation" (1988) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 1 at 46, hereinafter Smirnov II.

93. See Paragraph 4 of Decree 48, infra Appendix B, and Paragraph 2 of Decree 49, infra Appendix C.

94. See Paragraph 9 of Decree 48, infra Appendix B, and Paragraph 9 of Decree 49, infra Appendix C.

joint venture at the time of signature of the final agreement and during the period between signature of the final agreement and registration with the Ministry of Finance. It is true that Instruction No. 34 of February 12, 1987 of the U.S.S.R. Ministry of Finance "On the Procedure for Registering Joint Ventures, International Amalgamations and Organizations Set Up on Soviet Territory with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies", and the later issued Regulation of the U.S.S.R. Ministry of Finance No 224 of November 24, 1987 "Concerning the Procedure of Registering Joint Ventures, International Amalgamations and Organizations Established in the Territory of the U.S.S.R. with the Participation of Soviet and Foreign Organizations, Firms, and Authorities", in Chapter I, Paragraph 3 prohibit the joint venture from opening a bank account and/or undertaking any negotiations or entering into any transactions or concluding any contracts with Soviet organizations before its registration.[95] The Instruction and the Regulation confirm that the joint venture is not a

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95. Reference to Instruction No. 34 is made in Smirnov II, supra note 92 at 45; see also Regulation of the USSR Ministry of Finance No. 224 of November 24, 1987 "Concerning the Procedure of Registering Joint Ventures, International Amalgamations and Organizations Established in the Territory of the USSR with the Participation of Soviet and Foreign Organizations, Firms and Authorities" in UNCTC, supra note 61 at 201; Voznesenskaia 1988, supra note 91 at 125; and "Soviet Joint Ventures: Answers Coming Slowly", Business Eastern Europe (12 October 1987) 321, hereinafter Answers.

legal entity before registration. But then, as Ninel N. Voznesenskaia points out, the wording of Paragraph 9 of both Decrees 48 and 49 appears confused. How can there be discussion about "the foundation documents (of the joint venture) com[ing] into force" and about "joint ventures established in the territory of the U.S.S.R." after signing on the one hand; and about the joint venture "acquir[ing] the rights of a legal entity at the time of registration" on the other?[96] It is obvious that future amendments should reform the obscure and somehow contradictory phrasing of the Paragraphs.

After registration Paragraph 9 of Decrees 48 and 49 require publication of a relevant notification in the press. It has been reported that this requirement creates confusion since the law does not define where notifications are to be published. Consequently, although the first registration was carried in Izvestiia, others got lost in small local or regional papers.[97] We believe that this point should be dealt with specifically in future amendments.

The 1985 Czechoslovak Principles do not determine directly which state body is responsible for granting a permit. They contain an indirect provision, though. They

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96. See Voznesenskaia 1988, ibid.

97. See Answers, supra note 95 at 321-322.

provide that "Czechoslovak participants may not enter into a joint venture, unless a state permission by their central government body is granted." Besides, "such authority must secure in advance an approval by the State Planning Commission, Federal Ministry of Finance, Federal Ministry of Foreign Trade and Czechoslovak State Bank".[98] It is understood that the above procedure would more or less apply to the foreign party too. One may note the cautious legislative approach adopted by the 1985 Principles. The mechanism established in order to grant an approval requires coordination and approval by an important number of state bodies. These bodies have to approve the constituting documents of the common company. The documents are called in this country, depending on the legal structure of the common company, memoranda or articles of incorporation.[99]

Regarding registration procedure, the 1985 Principles provide that "a common organization will not become a legal entity until entered into the Register of Commerce (Companies

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98. See Chapter I, Section 5, Sub-section 1 of the 1985 Principles, infra Appendix E.

99. See Chapter I, Section 4 of the 1985 Principles, infra Appendix E. It should be noted at this point that, in contrast to Soviet legislation, the 1985 Czechoslovak Principles and the 1986 Polish Law provide for incorporation of the joint venture: see also the discussion on legal structures, infra Chapter III, Section C.

Register)".[100] With this brief and concise regulation no legal interpretation questions seem to arise, as is the case under Soviet legislation. Any specific publication provision is missing from the Principles. It can be presumed that the Companies Register is per se public and further official publication deemed useless.

The Polish legal framework regarding procedure to obtain a permit differs under the 1982 Law from that prevailing under the 1986 Law. One preliminary remark can be made, however: Both procedures are detailed and complex.

First, under the 1982 Law an application for a permit to establish a so-called foreign economic unit is to be submitted jointly by the partners;[101] conversely the application for a permit to establish a company with foreign capital participation under the 1986 Law is submitted by the Polish partner.[102] A possible differentiating reason could be the much more personal and limited scope of the 1982 Law in contrast to the 1986 Law, which regulates rather large economic units.

Second, under the 1982 Law the competent authority to grant a permit is the State local provincial administrative

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100. See Chapter I, Section 5, Sub-section 2 of the 1985 Principles, infra Appendix E.

101. See Article 11 of the 1982 Law, infra Appendix F.

102. See Article 5, Paragraph 2 of the 1986 Law, infra Appendix G.

authority at the voivodship (provincial) level;[103] conversely under the 1986 Law the permit is granted at the central level by the Minister of Foreign Economic Cooperation acting in agreement with the Minister of Finance and other authorities. It seems that this mechanism strengthens the uniformity and stability of State policy.[104]

Third, under both laws, it is specified what the application for a permit should contain. The most important requirements are basically the same: purpose of formation; kind and scope of economic activity; expected employment scale; value and proportion of capital invested; proposed location of the seat of the enterprise in Poland.[105] Other provisions stipulate possible legal structures of the new economic unit, since under the 1982 Law the foreign firm can be wholly foreign-owned by a foreign natural or juridical person, or it can form a company with the participation of Polish economic units.[106] Conversely, under the 1986 Law the new company must be created through a merger between Polish state enterprises and other socialized units on the

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103. See Article 8, Paragraph 2 of the 1982 Law, infra Appendix F.

104. See Article 5, Paragraph 2 of the 1986 Law, infra Appendix G. See also Piontek, supra note 76 at 328.

105. See Article 10 of the 1982 Law, infra Appendix F, and Article 9 of the 1986 Law, infra Appendix G.

106. See Article 1 of the 1982 Law, infra Appendix F.

one hand, and foreign enterprises or natural persons on the other.[107] Another different aspect is the requirement under the 1982 Law that the foreign investor pays a founding deposit. This deposit is a prerequisite for granting of a permit and is released as soon as the new unit is fully operational.[108] It seems that this requirement was imposed by the 1982 Law in order to safeguard Polish State interests, since a number of foreign investors were interested in casual investment in Poland. Their main purpose was to engage in unlawful speculation and misrepresentation in order to obtain the highest possible profit in a short period of time, and then disappear.[109] This requirement was felt unnecessary under the 1986 Law. Still, the required feasibility study together with a certified document showing legal status and financial standing fulfill the same goal.[110]

Under the 1982 Law, as soon as the permit is granted, the enterprise is obliged to register in the Register of

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107. See Article 3 of the 1986 Law, infra Appendix G. On the issue of legal structures see more infra Chapter III, Section C together with bibliographical references.

108. See Article 16 of the 1982 Law, infra Appendix F.

109. See Arnoldi, supra notes 28 at 33, 46 and 59.

110. See Article 9, Paragraph 2, Item 2 of the 1986 Law, infra Appendix G. The certification of documents showing legal status and financial standing is carried out in practice by the territorially appropriate Office of the Commercial Counsellor of the Polish People's Republic; see Piontek, supra note 76 at 311. Tne (cont'd.)

Foreign Enterprises. Entry in the Register is made by courts of law in accordance with regulations determined by the Minister of Justice.[111] Under the 1986 Law the company is subject to registration in a court of register according to the rules of the Commercial Code on the Commercial Register. The permit is to be attached to the application for registration.[112] In addition, within two weeks, the management board of the company is obliged to notify the Minister of Foreign Economic Cooperation, indicating the court in which the company has been registered.[113]

When comparing the registration systems in the U.S.S.R., Czechoslovakia and Poland, it may be noted that the procedure required by the two latter countries involves courts of law and is similar to registration in civil law jurisdictions, such as West Germany and France. We should always bear in mind that in Poland this is the applicable procedure still provided for by the Commercial Code of 1934. Conversely, in the Soviet Union the procedure is purely administrative. In the three countries the permit and

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required feasibility study is usually conducted by the local consulting organization Invest-export; see "Will our Polish JV Work? Official Report Tells All", Business Eastern Europe (4 January 1988) 3.

111. See Article 20, Paragraphs 3 and 1 of the 1982 Law, infra Appendix F.

112. See Article 12 of the 1986 Law, infra Appendix G.

113. See Article 13 of the 1986 Law, infra Appendix G.

registration procedure fully satisfy the requirements of state supervision.

A final point worth mentioning in this context is that only one Eastern European country sets a definite time limit for the final approval of the joint venture application. This country is Poland. Under both the 1982 and the 1986 Laws the appropriate decision must be issued within three months from the day the application was submitted.[114] The 1982 Law mentions that this time period applies to complete applications. Such a provision should be understood as implied by the 1986 Law also.[115] We believe that in the other countries the decision is to be made within a reasonable time, otherwise any unjustified delay would constitute a negative factor in welcoming foreign investment.

2. Appeal Against Refusal of the Host Countries to Grant a Permit

When a potential foreign investor expresses interest in forming a joint venture in a certain country his motivation is to be understood as either to continue under a new form and expand an already existing industrial cooperation agreement[116] or as a favorable reaction to expressed

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114. See Article 13 of the 1982 Law, infra Appendix F and Article 9, Paragraph 4 of the 1986 Law, infra Appendix G.

115. Ibid.

116. See supra Chapter II, Section B; see also supra note 31 and the references therein contained.

manifestations of interest to form a joint venture by state enterprises or other potential partners of this country. It is difficult to think of a Western company, which intends to create a joint venture, starting with no positive indications from the host country. By this train of thought, everything depends on the success of the undertaken negotiations. If the agreed terms satisfy both parties, submission of an application should be expected. If the negotiations do not end up satisfying the aims envisaged by the parties, no application will be submitted whatsoever. Therefore, the need to file an appeal against a negative decision of the host country's authorities seems very improbable to occur.

In the legislation of the Soviet Union and Czechoslovakia this issue is not mentioned at all. Both Soviet Decrees 48 and 49 remain silent on the matter. The same applies in the case of the Czechoslovak 1985 Principles. Only the Polish laws contain a relevant provision.

More precisely, Article 19 of the 1982 Law stipulates that decisions concerning permits may constitute the object of an appeal before the administrative court according to the Code of Administrative Procedure. However, no appeal is permitted against decisions refusing to grant a permit for reasons of state security or protection of state secrets.[117] It is questionable as to what extent use of the provision for

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117. See Article 19 of the 1982 Law, infra Appendix F.

appeal of the 1982 Law has been made. It has been reported that the Polish State has made use of the provision of this Article on state security infringement in order to discourage casual investment or to turn down founding of unacceptable enterprises.[118] This policy rendered the appeal provision null in practice.

On the contrary, Article 6, Paragraph 2 of the 1986 Law prohibits any appeal, explicitly stating that "the refusal to grant a permit may not be contested before an administrative court".[119] Thus, the Minister of Foreign Economic Cooperation may make a final decision as to whether or not to grant a permit if he considers the economic activity to be undertaken not advisable, based either on national economy interests or on state security.[120] Predominance of state policy is therefore consolidated.

3. The Need for a Special Foreign Trade Permit

Every new joint venture faces the question of whether or not it will be involved in foreign trade activities. The legislation of socialist states usually considered this field

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118. See Arnoldi, supra note 35 at 58.

119. See Article 6, Paragraph 2 of the 1986 Law, infra Appendix G.

120. See Article 6, Paragraph 1 of the 1986 Law, infra Appendix G.

from a narrow perspective in the past. We should not forget that the state always has a monopoly of foreign trade.

This is the reason behind the Polish and Czechoslovak legal framework which deals with this issue. Under the 1982 Law in Poland the mixed enterprise needs to acquire issuance of a special permit by the Minister of Foreign Economic Cooperation - and not the State local administrative authority at the voivodship (provincial) level which is the competent agency for granting the general permit - in order to carry out foreign trade operations. This derives from a combined interpretation of Article 8, Paragraph 6 and Article 2, Item 3.[121] The Polonian enterprises are exceptionally involved in foreign trade, since their main focus is domestic trade and consumer goods. Nevertheless a number of them began to get involved, especially after the new tax breaks introduced with the 1985 Decree.[122]

The approach undertaken by the 1986 Law is almost equivalent. There is a major difference however. The right to conduct foreign trade is not granted by a special permit. It is granted by the original permit establishing the joint

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121. See Article 8, Paragraph 6 and Article 2, Item 3 of the 1982 Law, infra Appendix F. See also Rajski 1982, supra note 82 at 220.

122. See Arnoldi, supra note 35 at 60.

company, provided that such a request was filed with the initial application.[123]

In Czechoslovak legislation there is special provision on separate foreign trade licences.[124]

As Bohuslav Klein remarks:

> "The foreign would-be investors believe generally, that upon being granted the authorization to establish a common company, there are automatically granted the leave to engage in foreign trade. This is a mistake. The newly created joint venture company will have to apply formally for such a leave."[125]

The 1985 Principles differentiate the approach depending on the currency. If the joint venture is granted a foreign trade permit it can effect exports and imports automatically, in freely convertible currencies independently of the country; that is to say, even if a transaction takes place with another Comecon country but is carried out in a convertible currency, the company is authorized to undertake this transaction autonomously. Conversely, for foreign trade activities led in non-convertible currencies, the use of a Czechoslovak FTO as a middleman is mandatory. The deal will

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123. See Article 9, Paragragh 1, Item 8 in combination with Article 20, Paragraph I, Item 3 of the 1986 Law, infra Appendix G.

124. See Chapter II, Section 7 of the 1985 Principles, infra Appendix G.

125. See Klein, supra note 49 at 9.

be carried out at prices agreed between the joint venture and the FTO involved.[126]

The most modern approach on foreign trade operations is that provided by the Soviet joint venture legal framework. Decree 49 stipulates in Paragraph 24 that "a joint venture is entitled to transact independently in export and import operations necessary for its business activities, including export and import operations in the markets of C.M.E.A. member-countries".[127]

It is understocd that no other permit is required. From its creation the joint venture can automatically be involved in foreign trade activities without restriction. It may also use the services of an FTO under contractual arrangements.[128]

The situation is quite different under Decree 48. Due to lack of currency convertibility within Comecon the joint venture is required to settle accounts in transferable rubles[129] or in foreign currencies through the U.S.S.R.

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126. Ibid. at 9-10.

127. See Paragraph 24 of Decree 49, infra Appendix C.

128. Ibid.

129. The transferable ruble is a monetary accounting unit in use for commercial transactions between the Soviet Union and other CMEA Member-Countries; see, e.g., M. Marrese, "CMEA: Effective but Cumbersome Political Economy" (1986) 40 International Organization 287; "Transferable Ruble" - A Fiction, Soviets Admit", Business Eastern Europe (15 June 1987) 188.

Bank for Foreign Economic Affairs[130] and the International Bank for Economic Cooperation.[131] It is obvious that no special foreign trade authorization is required in this case.

C. Legal Structures

The definition of the legal structures by which a joint venture can constitute itself is an important issue for every country. The legislative approaches undertaken by the three countries under study are different.

The modern Polish legislator used a convenient tested way to regulate the structure of joint ventures: the pre-war Polish legislation which belonged to the broad family of civil law. The 1934 Commercial Code recognized three forms of companies: the limited liability company, which is similar to the West German Gesellschaft mit beschraenkter Haftung or the French Société à responsabilité limitée; the joint stock company which is similar to the German Aktiengesellschaft or the French Société anonyme; and the general partnership.

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130. The USSR Bank for Foreign Economic Affairs (Vneshekonombank) is the new bank which replaced the former Bank for Foreign Trade. On restructuring of the Soviet banking system see infra note 192 and relevant bibliographical references.

131. See Paragraph 21 of Decree 48, in ra Appendix B. The International Bank for Economic Cooperation and the International Investment Bank are Comecon banks; see supra Chapter II, Section B, and note 65 with bibliographical references.

The provisions of the 1934 Commercial Code with regard to international commercial transactions had been maintained in force by the 1964 Polish Civil Code.[132] So, when the 1982 Law was enacted it was very easy to refer to the 1934 Code and provide for use of any legal structure available, at the parties' selection.[133] The foreign investor may, of course, undertake activities as a natural person as well. In this case it is obvious that no company structure whatsoever is necessary.[134]

The 1986 Law provides slightly differently. First, only companies are allowed to undertakes activities under this law; incorporation is therefore indispensable. This provision stems even from the title of the law; it regulates "companies with foreign capital participation".

Second, Article 2 of the Law provides that the joint venture may take only the form of a limited liability or joint stock company.[135] Therefore, the general partnership, the third type of company provided by the 1934 Commercial Code, is excluded.

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132. For more on this Polish legal mechanism see supra Chapter II, Section A and note 26.

133. See Article 21 of the 1982 Law, infra Appendix F; see also Piontek, supra note 76 at 297.

134. Besides Article 21, see also Article 1 of the 1982 Law, infra Appendix F.

135. See Article 2 of the 1986 Law, infra Appendix G.

In Czechoslovakia the 1985 Principles provide for two forms of common companies: first, a company limited by shares, i.e. a form of incorporated company; second, an association.[136] The limited company is regulated by the Limited Companies Act of 1949 while the association is governed by the respective provisions of the International Trade Code of 1963, namely articles 625 ff.[137] At last the already existing legal framework for the establishment of a joint venture provided by the Czechoslovak International Trade Code of 1963, which has been mentioned previously,[138] is being activated in practice by the 1985 Principles.

The Soviet case is entirely different in this context. There is no provision for joint ventures to acquire concrete legal forms of a kind similar to those in force in Western or other socialist countries. The only specific structural provision is to be found in Paragraph 8 of Decree 48 and Paragraph 7 of Decree 49 regulating the contents of the joint venture statute.[139]

It can be argued that the long period of lack of joint venture legislation resulted in no experience in the field

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136. See Chapter I, Section 3 of the 1985 Principles, infra Appendix E.

137. See Klein, supra note 49 at 6.

138. See supra Chapter II, Section B and note 49.

139. See Paragraph 8 of Decree 48, infra Appendix B, and Paragraph 7 of Decree 49, infra Appendix C.

since industrial cooperation agreements were predominant. Moreover, it seems that the Decrees are purposely vague in order to enable the prospective partners to arrange their mutual relations at will. Thus, detailed experience would be gained in practice.

One thing is certain, however. The legal status of Soviet joint ventures as it stands today has been widely criticized. For instance it has been pointed out that a joint venture resembles a joint stock company without shares for its equity capital, only participation certificates. Consequently there are no shareholders and thus no annual general meeting.[140]

In this respect the New York Times reported recently:

> "... Soviet lawyers and bankers stressed how far they had come in 18 months in establishing the groundwork for joint ventures. But they acknowledged that there were still no laws governing some crucial questions, such as how the new ventures can be organized as independent companies rather than partnerships. Even the basic joint-venture law has big loopholes.
>
> "You register with the Ministry of Finance and you have a joint venture, but it is a kind of fiction", said Ninel N. Vosnesenskaya, a leading Soviet expert on joint-venture law.

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140. See "Finns or Japanese? First Soviet JV Signed", Business Eastern Europe (29 June 1987) 201 at 202.

There is no requirement that the ventures be capitalized, she said".[141]

To the above should be added another problematic feature: the different status created by Decree 48 with respect to special types of common ventures possible only between C.M.E.A. Member-Countries. The special types are, according to the Decree, international amalgamations and organizations. These ventures are legal entities under Soviet law[142] but they do not possess common property;[143] they are set up to coordinate cooperation, co-production and joint economic activities in individual industries, technical development, foreign trade or other economic fields.[144]

Yet even the existence of separate treatment of joint ventures by the two Decrees would definitely render difficult an eventual tripartite common company between a Soviet enterprise, an enterprise from another socialist country and a western firm.[145]

All reported legal vacuums and obscurities led to characterizing the actual legal framework as "uncertain" and

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141. See B.J. Feder, "Soviet Joint Ventures Face Obstacles", The New York Times (20 June 1988) D5, hereinafter Feder.

142. See Paragraph 7 of Decree 48, infra Appendix B.

143. See Paragraph 2 in combination with Paragraph 51 of Decree 48, infra Appendix B.

144. Ibid.; see also Durnev, supra note 65 at 12.

145. See Voznesenskaia 1988, supra note 91 at 120.

"not providing sufficient guarantees".[146]

In any case, if the legal régime is not strengthened and specified it would probably work as a disincentive in the long run.

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146. See Problems, supra note 31 at 81.

IV. OWNERSHIP

A. Partners and Equity Share of the Ownership: Actual and Anticipated Tendencies

As we have seen, a joint venture is still considered in every socialist country as an exceptional legal framework which follows a parallel track to that of the nationalized economy. The state is the owner of the means of production and exercises administrative supervision to every economic unit which operates within its boundaries.

Usually the local partners are state enterprises or other legal entities of the socialized sector of the economy. Their endeavor aims at safeguarding state interests of the host country during the course of their participation in the joint venture against possible foreign exploitation.

Because of the above, a socialist country's equity participation is generally required to be at least 51 per cent or more. There are exceptions, however. In the last few years countries such as Hungary, which had already acquired a certain experience with respect to joint ventures, started gradually allowing a foreign majority equity share in specific sectors of the economy such as tourism, finance or services.[147] This is still largely not the case in the three jurisdictions we deal with, though the Polish provisions are the most flexible of the three.

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147. See E.C.E., supra note 44 at 45.

Soviet Decree 49 explicitly stipulates that "the share of the Soviet side in the authorized fund of a joint venture shall not be less than 51 per cent".[148]

The Decree provides no exception whatsoever under any circumstance. Conversely, the different legislative treatment reserved for other CMEA Member-Countries is also stipulated in the same respect. Decree 48 does not require a 51 per cent Soviet majority. It only states that the equity shares of the partners in a CMEA joint venture are to be defined by the founding documents.[149] Moreover, it provides that "the property of a joint venture is the common socialist property of the U.S.S.R. and of the CMEA member-country concerned".[150] It is evident that the above provisions are aimed at greater intra-Comecon integration. This is expressly justified by the Preamble of Decree 48 whereby it is stated that the Decree was adopted "for the purpose of intensification of the socialist economic integration, consolidation of the scientific, technological and industrial potentials of the member-countries of the socialist community".[151]

The approach undertaken by the Czechoslovak Principles corresponds to the classic model of a 51 per cent host state

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148. See Paragraph 5 of Decree 49, infra Appendix C.

149. See Paragraph 27 of Decree 48, infra Appendix B.

150. See Paragraph 25 of Decree 48, infra Appendix B.

151. See Preamble of Decree 48, infra Appendix B.

majority share. Chapter I, Section 4, Item a of the Principles specifically defines that "a foreign participant cannot hold a share of more than forty nine (49) per cent in the corporate capital".[152] Again no exception whatsoever is envisaged.

The most important departure from the rule is to be found in the Polish 1982 Law. The Law is unique in this respect for a socialist country. It allows for 100 per cent foreign equity capital in the field of small industry.[153] This provision is noteworthy for an additional reason: the Law was adopted in the early 1980s, when such a departure could be characterized as at least provocative for a socialist country. Probably this is due to the intention of the Polish authorities to grant permits only to Polonians. But it was superseded by the final granting of permits even to the most odd combination of foreign partner origins.[154]

The Law, nevertheless, provides for a Polish equity share exceeding 50 per cent in cases substantiated by

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152. See Chapter I, Section 4, Item a of the 1985 Principles, infra Appendix E.

153. See Article 1, Paragraphs 1 and 2 of the 1982 Law, infra Appendix F.

154. See supra note 45.

economic or social reasons.[155] Yet, it has been reported that this has never occurred in practice.[156]

The 1986 Law follows the general rule as well. Article 8, Paragraph 1 defines that "the equity participation of Polish partners in company's capital shall be at least 51%".[157] However, Paragraph 2 of the same Article stipulates for an important diversion. The Minister of Foreign Economic Cooperation is granted authorization to depart from the rule of Paragraph 1 provided that: first, he acts in accordance with the Minister concerned; second, the case is economically justified; and third, state security considerations do not constitute an obstacle.[158] This legal provision is of utmost importance. This exceptional device practically unties the hands of the Minister. He can show more flexibility in the matter, since there is no legal barrier prohibiting him from accepting a foreign majority equity share. In a later stage it would be easy for the exception to become a rule. Accordingly, it was declared by Polish sources at the end of 1987 that:

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155. See Article 15 of the 1982 Law, infra Appendix F.

156. See Piontek, supra note 76 at 237; and Rajski 1982, supra note 82 at 222.

157. See Article 8, Paragraph 1 of the 1986 Law, infra Appendix G.

158. See Article 8, Paragraph 2 of the 1986 Law, infra Appendix G.

> "At first the state insisted on securing 51 per cent of shares in each venture for itself but beginning with 1988, however, it will accept minority shares".[159]

Furthermore, it was additionally remarked:

> "Western businessmen do not become owners of the joint ventures but act as partners in them. Besides, the ventures have to operate under the regulations applicable in Poland. All in all, there is no danger of the economy being taken over by foreign capitalists."[160]

It is evident that the host countries can always find ways to keep foreign direct investment on their soil under control. The majority equity share owned by nationals of the country does not itself constitute a specific guarantee. Equity share is just a way to divide investment and to share risks and profits accordingly. The 51 per cent majority share owned by the host country is rather a question of theoretical principle than a question of true substance.

It is unfortunate that no such exceptional legal provision exists in the Soviet Decree 49 and the Czechoslovak 1985 Principles, as we have seen. Soviet legislation is expected to change, however. Consequently, the current requirement that Soviet partners control at least 51 per cent of the equity under Decree 49 may be abandoned.[161]

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159. See "Foreign Capital in Poland" (1988) 21 Contemporary Poland, No 1 at 12.

160. Ibid. at 13.

161. See Feder, supra note 141.

B. The Problem of Capital Contribution Valuation

Economies of the socialist countries do not have market pricing: a pricing which would not only be arbitrarily implemented by the state in order to fulfill state policy goals, but would also reflect real market values in accordance with world market prices. It is therefore extremely problematic to valuate their contributions into the joint venture's capital. In contrast Western contributions into the new joint venture can be valuated in world market prices; for their prices are governed by manufacturing costs or potential profitability.[162]

Contribution can take the form of tangible or intangible assets: equipment; machinery; technology; trademarks, patents and other industrial property rights; services; leases and estate property; and, of course, cash. An enumeration of possible contributions is undertaken by Soviet legislation in Paragraph 27 of Decree 48 and in Paragraph 11 of Decree 49. The enumeration is almost identical in the two Decrees and includes "buildings, structures, equipment and other assets, rights to use land, water and other natural resources, buildings, structures and equipment, as well as

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162. On the issue of valuation of capital contribution in practice see "Handling Difficulties in Evaluating JV Inputs", Business Eastern Europe (17 August 1987) 257; see also "JVs with the Soviets: More Problems Appear", Business Eastern Europe (16 May 1988) 153 at 154, hereinafter More Problems.

other proprietary rights (including those to work inventions and use know-how), money assets".[163] The only difference lies in the monetary form of assets. Under both Decrees monetary contributions can be in the currencies of the partners' countries and in freely convertible currency. Under Decree 48 they can also be in transferable rubles.[164]

The Czechoslovak Principles name only the kind of foreign investment; they do not deal with Czechoslovak inputs. According to Chapter I, Section 4, Item c of the 1985 Principles: "the foreign investment may consist of machinery and equipment, things material determined in kind, documentation, technological process, inventions, know-how, technical personnel (staff) or financial means".[165] Foreign contributions are characterized as "practically everything having a property value".[166] It has been noted that the participants are expected to agree on the value of the share brought in.[167] Consequently, regulation by the

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163. See Paragraph 27 of Decree 48, infra Appendix B, and Paragraph 11 of Decree 49, infra Appendix C.

164. Ibid. On the transferable ruble see also supra note 129 and bibliographical reference therein contained.

165. See Chapter I, Section 4, Item c of the the 1985 Principles, infra Appendix E.

166. See Klein, supra note 49 at 6.

167. Ibid.

Principles is vague, since no pattern, such as world market prices is provided whatsoever. All depends on the parties involved.

The Polish 1982 Law enumerates possible capital inputs. Foreign contribution may consist of fixed capital assets, materials and industrial property rights.[168] The same regulation applies to Polish partners, provided of course, that the enterprise will be mixed.[169]

The Law requires that the minimum foreign investment contribution be not lower than the minimum founding deposit.[170] It is interesting to note that the 1982 Law establishes a minimum contribution but not the manner of valuation of non-pecuniary contribution. Valuation of intangible assets is regulated by Order of the Minister of Finance of November 16, 1982 "Concerning the Detailed Principles for Establishing the Value of Investment Contributions of Foreign Economic Entities in Small Industry and the Surplus of Export Income Over Import Expenditures".[171]

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168. See Article 12, Paragraphs 1 and 2 of the 1982 Law, infra Appendix F.

169. See Article 7, Paragraph 1 of the 1982 Law, infra Appendix F.

170. See Article 12, Paragraph 3 of the 1982 Law, infra Appendix F. On the requirement to pay a founding deposit, see supra Chapter III, Section B, Sub-section 1 and notes 108 and 109.

171. Reference to the Order is made in Rajski in Butler, supra note 32 at 165.

The 1986 Law defines contributions in a very simple way: cash or kind.[172] Polish partners contribute only kind.[173] The possibility of leasing state real property to the joint venture is as well envisaged.[174] Furthermore, the 1986 Law contains the provision that "the value and nature of contributions in kind are specified in contract or other founding documents of the company".[175] It is thereby implied that this is a matter to be agreed upon by the prospective partners. But the state reserves itself the right to verify the value of inputs by independent experts before it grants the necessary permit.[176]

As we have remarked, all three enactments seem to turn around the same issue: How can mutual agreement be achieved acceptable to both sides on a certain value and price for a contribution to the joint venture's capital? The strategy used by the host country appears to be to overprice its

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172. See Article 15, Paragraph 1 of the 1986 Law, infra Appendix G.

173. See Article 15, Paragraph 3 of the 1986 Law, infra Appendix G.

174. On the issue of leasing of immoveable property see following section (Chapter IV, Section C).

175. See Article 15, Paragraph 4 of the 1986 Law, infra Appendix G.

176. Ibid.

inputs, especially land and buildings. The foreign side seems to use the same tactic correspondingly, so that the level would be adequate and equal in practice.[177]

C. Leasing of Immoveable Property in the Territory of the Host Countries

Real estate is a specific case of contribution in kind to the joint venture's capital. Since discussion is about establishment on the host country's soil, this kind of contribution concerns the Eastern European partner.

Furthermore, in every socialist state land may not be available for private ownership, let alone for foreign private ownership.[178] Every arrangement involves a state concession. Therefore the foreign investor can only use and not acquire any kind of real estate. That is why real estate input usually constitutes the most common kind of contribution by the Eastern European party.

But in this case the issue of valuation reemerges; for local investors tend to overvaluate immoveable property on the negotiating table.[179] In most cases this is not

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177. On the overvaluation as both a solution and a dangerous device see supra note 162.

178. See R.M. Buxbaum, "Legal Issues Concerning the Financial Aspects of Joint Ventures with Non- market Economy Firms (1987) 2 ICSID-Foreign Investment Law Journal 66 at 69, hereinafter Buxbaum.

179. See More Problems, supra note 162 at 154; see also Buzescu, supra note 29 at 424.

accepted by the Western side. Consequently, it was suggested that, instead of capitalizing the property, the solution seems to be to let the local partner arrange for the land, but offering it to the joint venture on a rental basis.[180] Presumably, an arrangement can be reached easier in the framework of a lease.

It has been recently reported that Soviet lawyers have completed rules for establishing a value for the land used by the joint venture.[181] Whether this new device will be accepted by prospective investors, and the means of its practical implementation, remain to be seen.

The problem of land contribution is treated by the Soviet legislation. Jerome A. Cohen stresses the constitutional problems which might occur in this respect.[182] We do not share this view. One of the reasons underlying adoption of Decree 6362 at the high level of the Presidium of the U.S.S.R. Supreme Court instead of the U.S.S.R. Council of Ministers is to settle this issue.[183] More specifically, as the Decree stipulates, "land, entrails of the earth, water resources, and forest may be made available for use to joint

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180. See More Problems, ibid.

181. See Feder, supra note 141.

182. See Cohen, supra note 67 at 169-170.

183. On constitutional aspects which led to adoption of Decree 6362 see the discussion, supra Chapter II, Section B.

ventures as for payment as well as free of charge".[184] In a second stage Decrees 48 and 49 include land and estate on the list of possible contributions to the authorized fund of the joint venture, as we saw in the previous section.[185]

The Czechoslovak Principles remain silent on this issue. They do not deal with contributions by local partners. Therefore this is a question to be agreed upon by the parties.[186]

The Polish 1982 Law contains no special provision about land or other real estate except the general provision on contributions.[187] Conversely, the 1986 Law specifies that "state real property may be leased to the company upon the approval of a proper local administrative authority".[188] It is to be noted here that according to the Law of April 29, 1985 "On Land Management and Expropriation of Realties", mere contribution of the right to use state-owned land by the Polish partner to a company - therefore also to a joint venture - is insufficient for the company to use the real

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184. See Paragraph 4 of Decree 6362, infra Appendix A.

185. See Chapter IV, Section B, supra, and notes 163 and 164.

186. See Chapter IV, Section B, supra, and notes 165 and 166.

187. See Chapter IV, Section B, supra, and notes 168 and 169.

188. See Chapter IV, Section B, supra, and note 173.

estate. An appropriate decision of the relevant local organ of state administration is essential.[189] In this manner state control of this portion of the means of production is satisfied through its appropriate agency. Consequently, no constitutional issue is raised through application of this device.

D. Granting of Bank Credits

It is true that no joint venture can engage itself in productive activity without capital contributions. But in most of the cases initial inputs are not sufficient. Now comes the crucial role of bank credits which are to be granted to the joint venture at its creation or consequent operation.

All three sets of enactment under study provide for financing of the joint venture. Under the Soviet system, Decree 48 stipulates that intra-Comecon joint ventures may be granted credits by the following banks:

- First, in rubles by the U.S.S.R. State Bank and the U.S.S.R. Bank for Industrial Construction.[190] The terms under which these credits can be granted should be at least as favorable to those given to comparable Soviet state-owned

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189. See Piontek, supra note 76 at 312.

190. The USSR Bank for Industrial Construction (Promstroibank) replaced in the second half of 1987 the USSR Bank for Construction; see infra note 192.

organizations.[191] It is noteworthy that in this respect Comecon joint ventures are favorably treated like similar Soviet state enterprises under the principle of pursued intensification of intra-Comecon integration.

- Second, in transferable rubles or foreign currencies by the U.S.S.R. Bank for Foreign Economic Affairs (Vneshekonombank); the two Comecon banks: International Investment Bank and International Bank for Economic Cooperation; or by foreign banks or firms with the consent of Vneshekonombank.[192] In this case credits are granted on commercial terms.

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191. See Paragraph 34 of Decree 48, infra Appendix B.

192. Ibid. In the second half of 1987 the Soviet banking system was reorganized on sectorial specialization principles. Five specialized banks were established: the USSR Bank for Foreign Economic Affairs (Vneshekonombank); the USSR Bank for Industrial Construction (Promstroibank); the USSR Bank for Wage, Savings and Population Credit; the USSR Agroindustrial Bank (Agroprombank); and the USSR Bank for Housing, Municipal and Social Development (Zhilsotsbank). The sixth bank, the USSR State Bank (Gosbank) heads the entire banking system. On the reorganization of the Soviet banking system see, e.g., A. Rozhdov, "The USSR Banking Reform" (1988) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 3 at 40-42; "USSR at Midyear: Trade Down, Outlook Bleak", Business Eastern Europe (31 August 1987) 273 at 274; Y. Ivanov, "Vneshtorgbank of the USSR and Restructuring of the Mechanism of Foreign Economic Activities" (1987) Foreign Trade (English edition of Vneshniaia Torgovlia), No. 11 at 4-11, hereinafter Yuri Ivanov.

The approach of Decree 49 is purely commercial. It simply states that a joint venture may use credits on commercial terms, if necessary. Credits are granted in this case: first, in foreign currency from the U.S.S.R. Bank for Foreign Economic Affairs or, with its consent, from other foreign banks and firms;[193] second, in rubles from the U.S.S.R. Bank for Foreign Economic Affairs.[194]

A few months after adoption of the Soviet joint venture legislation, Gosbank and Vneshtorgbank adopted jointly an Executive Order which regulates the procedure for crediting together with the procedure concerning settlement of accounts and repayment of credits by the joint ventures.[195]

Now let us come to the question as to how Vneshekonombank or other Soviet banks are able to grant credits, especially in hard currency. The solution is simple: besides available Soviet state hard currency funds, Vneshekonombank borrows hard currency from Western banks.

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193. It was stated that Vneshekonombank usually grants foreign currency credits for a period of four years; see Yuri Ivanov, ibid. at 8 and 11.

194. See Paragraph 27 of Decree 49, infra Appendix C.

195. See Executive Order of September 22, 1987 of the State Bank of the USSR and the Bank for Foreign Trade of the USSR "On the Procedure for Crediting to and Settlement of Accounts of Joint Ventures, International Amalgamations and Organizations of the USSR and Other Member-Countries of CMEA and of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries" in UNCTC, supra note 61 at 177.

In the beginning the Western bank approach was cautious. But little by little the interest in lending to joint ventures especially in the U.S.S.R. picked up noticeably and overcame the risk factor.[196] For example, in 1987 Crēdit Lyonnais (France) was in fact one of several European banks having set up a joint task force with the former Vneshtorgbank and Gosbank to discuss the establishment of a joint venture bank in the Soviet Union for possible lending to East-West joint ventures.[197] The agreement was signed in early March of 1988 between Crēdit Lyonnais, leading a syndicate of Western banks, and Vneshekonombank. The object of the agreement was an eight-year 150 US million dollar loan.[198]

In this way Vneshekonombank started granting credits to joint ventures established under the terms of Decree 49. The financing of the Italian FATA group was reported as the first case.[199] Under the terms of the protocol each side would be required to invest only 12 per cent initially. The remaining 76 per cent of the founding capital would be lent

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196. See "Financing JVs: Who Bears the Risk?", Business Eastern Europe (20 July 1987) 229, hereinafter Financing.

197. Ibid.

198. See "Focus on Financing: USSR", Business Eastern Europe (7 March 1988) 80.

199. See Joint Venture No. 29 in "Details of Joint Ventures in the Soviet Union", infra Appendix H.

by Vneshekonombank in the new joint venture itself.[200] This large-scale credit was finally granted to "Sovitalprodmash", the new joint venture, by both Vneshekonombank and Mediocredito, an Italian bank.[201] Furthermore, in April of 1988 Svenska Handelsbanken, Sweden's third largest commercial bank, signed an agreement with four Soviet banks aimed at developing and financing Swedish-Soviet joint venture projects. The agreement was signed with Vneshekonombank, Promstroibank, Agroprombank and Zhilsotsbank.[202] As can be seen, a number of Soviet banks, besides Vneshekonombank, are interested in becoming involved in financing joint ventures.

In April 1988 another joint venture was signed between British and Soviet companies to modernize two large petro-chemical plants in the Soviet Union. The different element of this joint venture is in the way of financing. Virtually all the initial financing will be provided from outside the

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200. See Financing, supra note 196, and E.C.E., supra note 44 at 56.

201. See I. Ivanov, "Joint Ventures in the USSR: Lessons of the First Year" (Moscow: Novosti Press Agency, 1988) at 2, hereinafter Ivan Ivanov.

202. See S. Webb, "Bank Pact to Boost Joint Soviet-Swedish Ventures", The (London) Financial Times (12 April 1988) 9; see also supra note 192.

Soviet Union through the banks: Morgan Grenfell and Moscow Narodny Bank Limited.[203]

As demonstrated from the above examples, Western interest in financing grows larger and larger. However, Comecon's International Investment Bank is also offering financial assistance to a joint venture for the first time: Benefiter will be the Plovdiv-based Bulgarian-Soviet Avtoelektronika joint venture.[204] The Bank can also envisage granting credits to East-West joint ventures, as reported by Business Eastern Europe in May 1988.[205]

The Czechoslovak Principles determine conditions for credit granting in the Chapter on Foreign Currency Rules. It is stipulated that the needs of the common company for foreign currencies will be covered by means of credits. Yet the company is not included in the country's foreign currency plan. The credits will be taken from Czechoslovak foreign currency banks, or from foreign companies under conditions currently granted to foreign applicants.[206] In this

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203. See Q. Peel & A. Taylor, "UK-Soviet Deal Signed to Modernize Chemical Products", The (London) Financial Times (16 April 1988) 2; on the Moscow Narodny Bank Limited see supra note 12.

204. See International Investment Bank, supra note 65 at 171.

205. Ibid. at 172.

206. See Chapter II, Section 8, Sub-section 1, Item b of the 1985 Principles, infra Appendix E.

context it is apparent how, on the one hand, the joint venture is considered as a Czechoslovak resident[207] company but on the other it is isolated and treated like a foreign company. The approach undertaken towards the company is cautious and reserved.

The credit grants will be governed by the applicable Czechoslovak rules; but at the same time the Czechoslovak State Bank is authorized to allow deviation from and exceptions to these rules,[208] which in itself is a sign of flexibility.

Credit regulation is defined in a specific chapter of the 1982 Polish Law.[209] Such a treatment reflects the importance given to foreign enterprises at the time when the Law was adopted. The Law stipulates that operating and investment credits are available to the enterprises from Polish or foreign banks. They are granted on the grounds of an agreement and according to principles determined by the Council of Ministers.[210] The significance of foreign enterprises is again shown here since the conditions for

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207. See Chapter II, Section 8, Sub-section 1, Item a of the 1985 Principles, infra Appendix E.

208. See Chapter II, Section 9, Sub-section 1 of the 1985 Principles, infra Appendix E.

209. See Chapter 4 of the 1982 Law, and its Articles 28 and 29, infra Appendix F.

210. Ibid.

granting a credit are not set up by the State local authorities at the voivodship (provincial) level, but the Council of Ministers itself.

Under the 1986 Law the treatment is equally favorable. By virtue of Paragraphs 2 and 4 of Article 24, the terms under which credits are granted are equivalent to those applying to state enterprises. They constitute the object of a contract finalized between the joint venture and the bank. Credits from foreign banks can be obtained after permission of the bank in which the common company maintains its accounts.[211] We note at this point that in respect to credits the treatment is more favorable than that provided by Soviet legislation. The equivalent application of the relevant rules set for state enterprises is guaranteed regardless of the origin of the joint venture's partners and the currency in which credits are granted.

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211. See Article 24, Paragraphs 2 and 4 of the 1986 Law, infra Appendix G.

V. MANAGEMENT AND PERSONNEL

A. Holding of Corporate Bodies' Key Positions by Host Countries' Nationals

Appropriate management of the joint venture constitutes the core of success for its operating activities. By and large the structure of the corporate organs is similar to that of Western corporations.[212] Usually its structure is organized in a two-level scheme comprising the highest control organ and the everyday business management.

One of the main preoccupations of Eastern European countries has always been that their nationals have an important participation in the management bodies and, most importantly hold key positions. This expresses their preoccupation to substantially control the joint venture so that its activities do not contradict the interests of the socialist state. However, this approach does not constitute a general rule. For instance, Hungarian joint venture legislation sets no nationality requirements for the members of the corporate bodies of the joint venture company.[213]

In the three jurisdictions that we study this is a requirement. There are however exceptions: Soviet Decree

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212. See E.C.E., supra note 44 at 63.

213. Ibid.

48 provides for two management bodies: the Board, at the highest governing level, and the Management, for day-to-day operational activities. Both bodies are composed of nationals of the two CMEA Member-Countries. Yet, it is provided in the Decree that only the Director General should be a Soviet citizen.[214] Therefore, the Chairman of the Board can be a citizen of the other CMEA Member-Country or Countries taking part in the venture.

This is not the case under Decree 49. By stipulation of its Paragraph 21 this Decree specifies that both the Chairman of the Board and the Director General should be citizens of the U.S.S.R.[215]

The Czechoslovak Principles follow the same path but in a slightly different way. The Principles do not define the corporate bodies at all. They leave this issue to the decision of the parties involved. Chapter I, Section 6 of the Principles, however, contains only one provision: that the presiding members in such bodies should be exclusively Czechoslovak nationals.[216]

The Czechoslovak side argued that this provision should not create unsurpassable difficulties in practice. As

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214. See Paragraph 16 of Decree 48, infra Appendix B.

215. See Paragraph 21 of Decree 49, infra Appendix C.

216. See Chapter I, Section 6 of the 1985 Principles, infra Appendix E.

Frantisek Fisera remarked:

> "Speaking openly, many foreign investors fear that their right to participate in the management of the company will be a formal right only. Once more, I think it fit to stress that it is up to the parties themselves to regulate not only by legal but also by factual means their relations."[217]

In other words, everything is negotiable at this point also, and its implementation relies upon agreed terms of the founding contract.

Approaches undertaken by the Polish legislation are different for the 1982 and 1986 Laws. Under the 1982 Law we note another departure from the rule. It is self-evident that we cannot speak about Polish participation in managing the enterprise since the latter can be wholly foreign-owned. But if a mixed enterprise is set up, its governing and management is to be agreed upon by the partners. Only one provision is mandatory: applicability of the relevant framework of regulations that is in force in Poland.[218] Here again, recourse is made to the provisions of the 1934 Commercial Code.

The 1986 Law approach is entirely different. It can be presumed that this is justified by its larger scope of application. More specifically, its Article 17 stipulates that the Company's Manager or, in the case of a Board of Manage-

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217. See Fisera, supra note 51 at 7; see also the relevant discussion, infra Chapter IV, Section B.

218. See Article 21 of the 1982 Law, infra Appendix F.

ment, its President must be a Polish citizen, residing permanently in Poland.[219] For the rest, matters of internal operation are to be left to agreements between partners.[220]

Effectiveness and flexibility of the managing framework is a key to a successful joint venture in every country. In socialist countries, management and marketing skills are more than indispensable within a "cadre of managers, whose markets have always been guaranteed and whose leeway to manage was sharply circumscribed".[221] There is a two-way remedy to this problem: first, establishment of Western marketing advisory firms in the host socialist country; and second, training of local managers in the West. On a level parallel to the above, legal services provided by Western or Eastern specialists in business law will be extremely helpful.

At least with respect to the Soviet Union, the above remedies seem to be working already. Accordingly, first, it was recognized by the Soviet side that foreign advisory firms constitute the fastest way to bring new ideas and broader experience into the trade structure; consequently, they are

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219. See Article 17 of the 1986 Law, infra Appendix G.

220. See Article 16 of the 1986 Law, infra Appendix G; see also Arnoldi, supra note 35 at 116.

221. See F. Barringer, "Soviet Calls for U.S. Trade Treaty", The New York Times (12 April 1988) D8.

now welcome to set up offices in the U.S.S.R.[222] Second, at the beginning of May 1988 a Russian delegation under Evgeni K. Smitnitsky, Rector of the Academy of National Economy in Moscow visited some of the schools in the United States to examine on location how Americans are trained in management and marketing.[223]

As regards legal services, the first foreign law firm was expected in February 1988 to open an office in Moscow.[224] Moreover, the Moscow City Bar Association intends to send Soviet lawyers abroad to spend time in Western firms. Accordingly, the head of the MCBA declared in June 1988 that the possibility to establish joint ventures between Soviet and foreign attorneys might soon be available.[225]

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222. See "Soviets Seeking Advisors for Management Guidance", Business Eastern Europe (23 November 1987) 371.

223. See L.A. Daniels, "Now Russia Wants to Learn The Way U.S. Managers Do", The New York Times (2 May 1988) D1 at D1 and D12.

224. See A. Kaletsky, "New York Law Firm to Open Office in Moscow", The (London) Financial Times (15 January 1988) 5.

225. See J. Carr, "Soviet Lawyers Embrace Perestroika" (1988) 7 International Financial Law Review No. 7 at 8.

B. Application of the Unanimity Principle in Decisions

Let us now examine in which ways the foreign side can play major roles in influencing joint ventures' activities.

Both Soviet Decrees 48 and 49 stipulate that the joint venture's statute should specify "the decision-making procedure and the range of issues to be unanimously settled".[226] This provision safeguards foreign investors' rights and interests. The principle of simple or enforced majority can, of course, be agreed upon for selected issues in the founding documents of the venture.

In the Czechoslovak 1985 Principles another important provision can be found. It is provided that the articles of incorporation of the joint venture company must ensure a reasonable participation of the foreign participant in the management, production and sale of the organization.[227] This Czechoslovak provision is unique in its nature among CMEA Member-Countries' joint venture legislation.[228] As

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226. See Paragraph 8 of Decree 48, infra Appendix B; and Paragraph 7 of Decree 49, infra Appendix C.

227. See Chapter I, Section 4, Item b of the 1985 Principles, infra Appendix E.

228. See E.C.E., supra note 44 at 63.

to the rest, it is left to the parties to decide in which way they will organize their relations.

Polish legislation remains silent on the point. We presume that this is a matter of mutual agreement as well. The flexible approach of both Polish laws appears to imply that. This applies, of course, when the subject is a common company, i.e. a mixed enterprise of the 1982 Law, or a joint venture of the 1986 Law. This question does not arise in a wholly foreign-owned Polonian enterprise.

The 1986 Law contains, however, one restriction. The parties cannot alter the basis under which their profits are distributed, that is the proportion of their shares in the company.[229]

Many practical ways have been suggested as to how the foreign investor can influence critical decisions and control the operation of the joint venture in an Eastern European country without holding a majority share.[230]

Control should be secured through special terms in the joint venture's statute. The terms can include among others:

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229. See Article 19, Paragraph 5 of the 1986 Law, infra Appendix G; see also Piontek, supra note 76 at 313.

230. See "Controlling the JV Without a Majority Share", Business Eastern Europe (3 August 1987), 243, hereinafter Controlling; E.C.E., supra note 44 at 46; Feder, supra note 141; and Buzescu, supra note 29 at 428.

- Enumerating of crucial issues, which call for unanimity voting. For instance, taking on additional partners, proportionally increasing the equity capital or liquidating the company.
- Provision for issue of two categories of voting shares with different voting rights enabling the foreign partner to select specific executives in key positions, as is the case occasionally in Western companies.[231]

However, the local national can usually find ways to facilitate the joint venture's operation better than a foreigner. Consequently, Western businessmen would have an interest in employing a local manager, if they had such a choice.[232]

The functionability of management schemes was characteristically underlined in January 1988 by Ivan D. Ivanov:

> "The fears that 51 per cent of the capital reserved for the Soviet side will lead to its "dictatorship in management" have proved to be groundless. In all joint ventures there are foreign members of the board of directors supervising quality inspection, efforts, technical policies and so forth".[233]

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231. Ibid.

232. See Controlling, supra note 230.

233. See Ivan Ivanov, supra note 201 at 1.

C. Obligatory Applicability of Host Countries' Labor Law

Every potential foreign investor's primary objective in an Eastern European country is to utilize the local labor force to satisfy the personnel needs of the joint venture. Workers in these countries are relatively well-trained although receiving lower pay levels than those in the West.[234] In spite of the fact that remuneration paid to local skilled workers is often higher than normally applicable in state enterprises, the cost is still low.

Employment is in accordance with host countries' policies with respect to adequate use of local workers. Utilization of foreign workers is considered exceptional and must be justified under the specific situation.

Regarding workers, the Soviet Decrees 48 and 49 differ slightly. Decree 48 stipulates that matters of pay, routine of work and recreation, social security and social insurance will be regulated by Soviet legislation regardless of the employee's national origin. The sole exception provided by the Decree is with respect to contrary provisions of inter-state or intergovernmental treaties to which the U.S.S.R. is a party.[235]

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234. See Arnoldi, supra note 35 at 41 and 99.

235. See Paragraph 57 of Decree 48, infra Appendix B.

Decree 49 adopts the same approach for the above matters but leaves matters of pay, leaves and pension of foreign employees to be regulated by individually signed contracts with the employees in question.[236] Furthermore, the Decree contains an express provision that "the personnel of joint ventures shall consist mainly of Soviet citizens".[237] According to Soviet interpretation, this means that foreign employees can be used normally in highly qualified posts.[238] This provision is not included in Decree 48, as we have seen, for it is in the spirit of this Decree that Soviet citizens and citizens of other C.M.E.A. Member-Countries are treated equally.[239]

The Czechoslovak Principles adopt a similar approach. The general applicability of Czechoslovak legislation is secured for persons employed by the joint ventures[240] with respect to wages and labor relations[241] as well as social security and pension retirement schemes.[242] Necessary

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236. See Paragraph 48 of Decree 49, infra Appendix C.

237. See Paragraph 47 of Decree 49, infra Appendix C.

238. See E.C.E., supra note 44 at 66.

239. See supra note 235.

240. See Chapter II, Section 10, Sub-section 1 of the 1985 Principles, infra Appendix E.

241. See Chapter II, Section 10, Sub-section 2 of the 1985 Principles, infra Appendix E.

242. See Chapter II, Section 10, Sub-section 3 of the 1985 Principles, infra Appendix E.

deviations therefrom will be allowed by the Federal Ministry of Labor and Social Matters.[243] The reason underlying this provision is "to avoid some discrepancies in legal regulations of Czechoslovakia and the countries the nationals of which will take part in the activities of the joint venture".[244] Therefore the principles show flexibility in this respect.

The Polish 1982 Law contains two rather general provisions; first, that enterprises will utilize labor resources according to the principles laid down by the Council of Ministers;[245] and second, that regulation of the Polish Labor Code will apply to labor relations in enterprises.[246] Thus it appears that while the applicability of Polish Labor law is mandatory, the wording of the first provision was left vague on purpose in order to facilitate negotiations depending on specific cases but at the same time to implement state policy as is necessary.

The approach of the 1986 Law is more detailed. The Law is explicitly restrictive in the manner of Soviet Decree 49 in stipulating that foreign citizens may be employed as

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243. See supra note 241.

244. See Klein, supra note 37 at 11.

245. See Article 22, Paragraph 1 of the 1982 Law, infra Appendix F.

246. See Article 22, Paragraph 2 of the 1982 Law, infra Appendix F.

justified by their special qualifications. The Law however undertakes a converse wording in comparison to Soviet Decree 49: instead of stipulating prevalence of local employees, it renders the utilization of foreign employees exceptional. Moreover, their utilization is subject to the consent of the state local administrative authority at the voivodship (provincial) level.[247] The obligatory application of Polish Labor law is also provided on a general basis.[248]

A last remark as regards the labor force is that only the Polish 1986 Law provides for creation of a supervisory council, comparable with the West German model of the Aufsichtsrat (supervisory council).[249] The company's employees elect one member in the council. This member may at the same time be one of the company's employees.[250] This constitutes a concrete departure from the provisions of the 1934 Commercial Code which clearly precluded, in Articles 207 and 378, the possibility of company's employees becoming members of the supervisory head.[251] Thus, the posture of the company's employees is considerably enhanced.

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247. See Article 32, Paragraph 3 of the 1986 Law, infra Appendix G.

248. See Article 32, Paragraph 1 of the 1986 Law, infra Appendix G.

249. See Article 18, Paragraph 1 of the 1986 Law, infra Appendix G.

250. See Article 18, Paragraph 2 of the 1986 Law, infra Appendix G.

251. See Piontek, supra note 76 at 300.

VI. TAXATION AND CUSTOMS FRAMEWORK

A. Exemption from Customs Duties and Taxes During the Initial Operating Period

Financial regulation of the joint venture's activities constitutes perhaps one of the most crucial matters; for no potential foreign investor undertakes such an involvement without favorable terms in this respect.

The first issue to be considered is the possibility of a tax and customs duties exemption during the initial operating period of the company. It is normally expected that the new joint venture be granted a tax holiday during the first years of its activities. A certain degree of exemption from paying customs duties during the initial period should also be normally expected.

The legislation of the three countries treats this subject in different ways. The Soviet legislation grants a tax relief to the joint ventures for their initial two years of operation. The legislative approach is identical in both Decree 48 and Decree 49.[252]

A practical problem occurred, however. As is evident, a great deal of time may pass from the time a company is registered with the Ministry of Finance to its becoming fully

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252. See Paragraph 43 of Decree 48, infra Appendix B, and Paragraph 36 of Decree 49, infra Appendix C.

operational. This was understood by the Soviet authorities and soon after enactment of the initial legislation, Decree 1074 modified the relevant provision. It is now provided that a tax exemption will be granted "during the first two years from the moment of showing declared profits".[253]

Another important exemption is provided by Decree 49. Equipment, materials and other property imported into the country by foreign partners in a joint venture, as their contribution to the authorized capital of the joint venture, are exempt from customs duties regardless of the time of importation.[254] An equivalent provision is not to be found in Decree 48, presumably because this type of relation is regulated between CMEA Member-Countries through bilateral or multilateral intra-Comecon Agreements.

It is obvious that exemption from customs duties is a major incentive to importing high-quality equipment and advanced-technology machinery for the operational needs of the joint venture. The Soviet legislation in this respect is very flexible and motivating. The relevant provisions can be characterized as creating incentives.

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253. See Decree 1074, infra Appendix D; see also Smirnov II, supra note 92 at 47.

254. See Paragraph 13 in combination with Paragraph 10 of Decree 49, infra Appendix C.

The Polish approach is favorable enough in the context of tax exemption but to a lesser extent. The 1982 Law in its original form contained special rules on taxation and exemptions in its Articles 26-28. After the amendments introduced by the Tax Law of July 29, 1983, a tax exemption is now granted for an initial operation period of three years. The exemption is granted, however, in the form of a tax refund, only if one-third of the income earned during that period has been reinvested into the operations of the enterprise.[255]

The 1986 Law is more attractive in its provisions. All joint ventures are exempted from income tax during their first two years of activity.[256] In comparison with the Soviet legislative provisions this scheme is less favorable. It resembles the form of Decrees 48 and 49 before their amendment by Decree 1074. Therefore, after the two-year time period taxation will be applied regardless of profits. With respect to customs duties the approach of the 1986 Law is slightly less favorable than the Soviet one. The Law specifies that imported contributions to the company's capital in kind, such as machinery, installations and

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255. See Piontek, supra note 76 at 323; and Arnoldi, supra note 35 at 53.

256. See Article 30, Paragraph 3 of the 1986 Law, infra Appendix G.

equipment, and means of transportation, are not subject to customs duties.[257] This provision extends to imported machinery, installations and equipment, and means of transportation, acquired during the first three years.[258] This time limit constitutes a less favorable treatment than that adopted by Soviet legislation, where any additional contribution to the authorized fund of the joint venture is exempted from customs duties at any time.[259]

The approach undertaken by the Czechoslovak Principles is the most stringent one in the three jurisdictions we compare. No tax incentive whatsoever is provided for joint ventures. Moreover, it is clearly stated that customs duties on imported goods will be collected in any case. The only relieving provision in this context is the possibility of applying for exemption from customs duties for a determined period of time. The application is to be submitted to the Federal Ministry of Foreign Trade which may grant it "if it thinks it fit".[260]

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257. See Article 31, Paragraph 1, Item 1 of the 1986 Law, infra Appendix G.

258. See Article 31, Paragraph 2, Item 2 of the 1986 Law, infra Appendix G.

259. See supra note 255.

260. See Chapter II, Section 11 of the 1985 Principles, infra Appendix E.

B. Taxation of Profits

Let us now compare the taxation framework in the three countries under study.

The basic taxation provision in the Soviet legislation is to be found in Decree 6362. The Decree stipulates that joint ventures will pay tax on profit at the rate and in the order provided for by the U.S.S.R. Council of Ministers.[261] At the same time, it allows the Ministry of Finance to reduce the tax rate or to completely exempt individual cases from tax payment.[262]. Furthermore, the Decree specifies the procedure under which taxes are to be collected.[263]

By this authorization of Decree 6362, Decrees 48 and 49 determine the tax rate at 30 per cent. The tax is due on profits, after deductions paid to reserve and other funds.[264] In addition to this tax, profits are taxed at an additional 20 per cent rate if transferred abroad. The withholding tax is not collected if a bilateral treaty

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261. See Paragraph 1 of Decree 6362, infra Appendix A.

262. Ibid.

263. See Paragraph 2 of Decree 6362, infra Appendix A.

264. See Paragraph 43 of Decree 48, infra Appendix B, and Paragraph 36 of Decree 49, infra Appendix C.

between the U.S.S.R. and the respective foreign state provides otherwise.[265]

The Soviet joint venture tax rate is not extremely high in comparison with Western companies' standards. Only the additional 20 per cent repatriation withholding tax has been criticized.[266] Besides, the rate is flexible and negotiable, depending, probably, on the priority attributed to this or that joint venture proposal by the host country.

The analogous framework in Poland is largely contradictory. The 1982 Law is today, after enactment of the 1983 Tax Law, almost prohibitive for foreign investors. The income tax rate is fixed by the Law at the base level of 85 per cent.[267] This income tax rate is the highest in the world.[268] Besides the income tax, other taxes, such as the turnover tax, apply to Polonian enterprises.[269] It is true that a number of tax exemptions and reliefs somehow alleviate the burden.[270] Yet, the average tax rate is

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265. See Paragraph 48 of Decree 48, infra Appendix B, and Paragraph 41 of Decree 49, infra Appendix C.

266. In the case of the joint venture Infa-otel, e.g., the issue of the 20 per cent withholding tax made difficult the conclusion of the agreement; see joint venture No. 9, infra Appendix H, and "First Soviet JV: Now The Problems Appear", Business Eastern Europe (27 April 1987) 129.

267. See Piontek, supra note 76 at 323.

268. See Arnoldi, supra note 35 at 54.

269. See Rajski 1982, supra note 82 at 225.

270. See Piontek, supra note 76 at 323-325.

about 70 per cent,[271] which is still extremely high.

Under these conditions many applications for permits to establish an enterprise were withdrawn and a general climate of distrust amongst Polonian enterprises was created since 1983.[272]

Conversely, the 1986 Law establishes a legal framework full of incentives. Its basic tax rate is fixed at 50 per cent.[273] The rate is moderately high, but the Law provides a unique device of tax alleviation: the tax rate is decreased by 0.4 per cent for each 1 per cent of the value of production or services exported by the company.[274] In other words, if the entire production of the joint venture is exported, the tax rate goes down to only 10 per cent. This provision is unique among similar legislations of socialist countries and underlines the export-oriented character of the recent Polish joint venture law.

At the other end of the spectrum lies the Czechoslovak legislation. The 1985 Principles provide for a 50 per cent basic tax rate.[275] They stipulate an additional withholding tax of 25 per cent, however, on dividends. This

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271. Ibid. at 325.

272. Ibid.

273. See Article 30, Paragraph 2 of the 1986 Law, infra Appendix G.

274. Ibid.

275. See Chapter II, Section 4, Sub-section 1 of the 1985 Principles, infra Appendix E.

additional income taxation is cumulative and, most importantly, the tax is due whether or not profits are transferred abroad, unless stipulated otherwise in an international treaty to which the country is a party.[276] It is obvious that the Czecholovak taxation framework is the heaviest of the three countries under comparison.

C. Reserve and Other Funds

A feature common to all CMEA Member-Countries is the reserve (risk) fund.[277] Since under most Eastern European legislations the joint venture is an autonomous legal entity, which remains more or less outside the nationalized sector of the economy, it is obligated to create a reserve fund; for the state would not cover any eventual losses.

Besides the reserve fund, a number of other mandatory funds, such as cultural or scientific, constitute a significant preoccupation of the legislation and therefore a distinct element of the joint venture structure in Eastern European countries.[278]

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276. See Chapter II, Section 4, Sub-section 4 of the 1985 Principles, infra Appendix E.

277. See E.C.E., supra note 44 at 57; see also Buzescu, supra note 29 at 424.

278. On the various obligatory funds see, e.g., "Advice to JV Negotiations: Watch Accounting Rules", Business Eastern Europe (27 July 1987) 236.

The Soviet Decrees regulate the issue of funds in identical phrasing.[279] They stipulate that agreed deductions from annual profits will create the capital of the reserve fund. The deductions will cease to be compulsory as soon as the capital of the reserve fund reaches 25 per cent of the authorized fund of the joint venture. This is the only mandatory provision. Every other matter, such as the amount of annual deductions and the formation and operation of other funds, will be agreed by the partners and included in the founding documents of the joint venture.[280]

Both Decrees provide for deduction of obligatory allocations to the reserve and other funds before profits are taxed.[281] This is very important because it alleviates the amount of tax to be paid finally, and avoids double taxation of the joint venture.

The Polish 1982 Law provides for creation of the enterprise's social and housing funds.[282] There is no

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279. See Paragraph 38 of Decree 48, infra Appendix B, and Paragraph 30 of Decree 49, infra Appendix C.

280. Ibid.

281. See Paragraph 43 of Decree 48, infra Appendix B, and Paragraph 36 of Decree 49, infra Appendix C; see also Cohen, supra note 67 at 177.

282. See Article 22, Paragraph 3 of the 1982 Law, infra Appendix F.

provision, however, for a reserve fund. Presumably, this is one of the goals covered by the requirement to pay an obligatory founding deposit.[283]

The 1986 Law is simpler in this respect. It stipulates formation of a reserve fund only in order to cover possible losses. The annual contribution to the fund is required to be 10 per cent of net profits. Allocations to the fund may stop once the fund has reached 4 per cent of annual operating costs.[284]

The Czechoslovak Principles still follow the pattern of a multiple fund structure equivalent to tnat of state enterprises. Thus, it is provided that the common company has to create corporate funds such as a reserve fund, a cultural and social fund, a remuneration fund and certain other funds.[285] The 1985 Principles do not indicate the sums which have to be contributed to the funds. It is understood that this is a matter to be agreed upon by the parties and included in the respective contract.[286]

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283. See Article 16 of the 1982 Law, infra Appendix F.

284. See Article 19, Paragraph 4 of the 1986 Law, infra Appendix G.

285. See Chapter II, Section 1, Sub-section 2, Item b of the 1985 Principles, infra Appendix E.

286. See Klein, supra note 49 at 8.

VII. DURATION AND DISSOLUTION

A. Duration: Limited or Unlimited in Time, With or Without Possibility of Extension?

The issue of the duration of a joint venture should be considered as a very delicate one within the context of a socialist economy. It is true that the traditional conception of joint ventures in a socialist state treats them as an exceptional device. As such, they should also be of limited duration so that the national soil would not be ceded to foreign capital. Today, after perestroika, the above approach seems rather old-fashioned. However, it is too early yet to speak about real integration of the joint venture concept in a state-controlled economy. Consequently, joint venture legislation still undertakes a cautious approach.

The Soviet Decrees stipulate that duration of the joint venture is a subject to be specified by the prospective partners in the founding documents of the company.[287] Consequently, everything can be agreed freely by the parties. Yet the Decrees are silent on the issue of an eventual extension of the operating period; here lies the key to safeguarding the state's interests. Theoretically, the foreign partner can be forced out at expiration of the operating

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287. See Paragraph 8 of Decree 48, infra Appendix B, and Paragraph 8 of Decree 49, infra Appendix C.

period. Whether this will be done or not is a question of policy to be determined by the state in the future. For the moment, the legal vacuum can lead to any interpretation. As was remarked by Jerome A. Cohen:

> "Perhaps the USSR is being cautious, not wishing to give either its own people or foreign investors the idea that joint enterprises can be renewed until considerable experience with them has been obtained".[288]

The Polish approach under the 1982 Law is more liberal. The Law provides for an operating period of up to 20 years, or 40 years if the depreciation period is longer. It furthermore provides for issuance of a new permit after expiration of the previous one.[289] Probably this flexible approach is possible because the Polonian enterprises operate only within the framework of the non-socialized sector of Polish economy, and their scope is limited to small industry activities.

Conversely, the approach followed by the 1986 Law is similar to that of the Soviet legislation. The expected duration of the company's activities should be included in the request to grant a permit for establishment of the company.[290] The Minister of Foreign Economic Cooperation may or may not accept the duration proposal of the parties at

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288. See Cohen, supra note 67 at 183.

289. See Article 17 of the 1982 Law, infra Appendix F.

290. See Article 9, Paragraph 1, Item 3 of the 1986 Law, infra Appendix G.

his discretion. In any case, the issued permit should prescribe its period of validity. E. Piontek considers that issuing a permit for a prescribed period does not imply that it is not renewable. He maintains:

> "The Law does not introduce any restriction as to the duration of the permit. The intention of the legislator was that companies set up under the Law have a permanent character. After the expiry of the initial permit, the partner may apply for an extension; providing the company continues to meet legal requirements, it can rely on a positive decision regarding the new application".[291]

This might be true. However, we are still in front of a legal vacuum. Only time will tell how this device will work.

The Czechoslovak legislation is entirely silent on the matter. Presumably, the issue of duration is a specific issue which finds no place in a general set of principles such as the 1985 Principles.

B. Dissolution, Liquidation and the Right of Pre-emption by Partners Representing the Host Countries

The issue of dissolution and liquidation is the last we will deal with in the present thesis. Although the joint ventures, as we saw, are generally established with long term perspectives - from the part of the foreign investor at least - the issue of dissolution, and the procedure of liquidation,

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291. See Piontek, supra note 76 at 316.

should preoccupy the founding parties from the negotiating period and before the founding document is signed. Concluding an agreement on that point also safeguards both parties' interests.

In a number of jurisdictions the obligation to reach an agreement specifically on liquidation procedure is stipulated by the joint venture legislation. For instance, both Soviet Decrees require that the statute of the joint venture contains specific provisions about liquidation procedure as agreed by the partners.[292] Furthermore, it is stipulated in the Decrees that a joint venture may be dissolved according to provisions contained in its founding documents or by decision of the U.S.S.R. Council of Ministers if it exceeded its scope.[293] We think that for the same legal cause the decentralizing provisions established by Decree 1074 should apply in an analogous way to dissolution also.[294] Therefore, it would be the task of the ministries and departments of the U.S.S.R. and the Councils of Ministers of the 15 Union Republics to decide about dissolution of a joint venture if the latter exceeded its scope.

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292. See Paragraph 8 of Decree 48, infra Appendix B, and Paragraph 7 of Decree 49, infra Appendix C.

293. See Paragraph 61 of Decree 48, infra Appendix B, and Paragraph 51 of Decree 49, infra Appendix C.

294. See Decree 1074, infra Appendix D, and relevant discussion, supra Chapter III, Section B, Sub-section 1 and note 89.

The Decrees provide, moreover, for a number of procedural matters as regards dissolution and liquidation procedure. These are: publication of a relevant notification in the press; and registration of the dissolution with the Ministry of Finance.[295] They also provide for fair distribution of the remaining assets of the company, after clearance of eventually existing obligations.[296]

The Polish 1982 Law refers to parties' agreements on dissolution and liquidation problems, and to relevant regulations of the Polish Civil and Commercial Code.[297] It is interesting to note that the Law grants a pre-emption to rights and assets of the enterprise under liquidation after settlement with the creditors.[298]

The regulation of the 1986 Law differs somehow. It refers to withdrawal of the permit if the company is involved in illegal activities or activities which are not covered by it. However, the organ which granted the permit sets a definite period to the company to refrain from said activities. If the company does not comply, the permit is with-

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295. See Paragraphs 61 and 63 of Decree 48, infra Appendix B, and Paragraphs 51 and 53 of Decree 49, infra Appendix C.

296. See Paragraph 62 of Decree 48, infra Appendix B, and Paragraph 52 of Decree 49, infra Appendix C.

297. See Article 37 of the 1982 Law, infra Appendix F.

298. See Article 38 of the 1982 Law, infra Appendix F.

drawn, and an application is submitted to the court for dissolution of the joint venture.[299] The dissolution is pronounced by a court order.[300] Under the 1986 Law also, the Polish partner enjoys the right of pre-emption, unless it is otherwise provided by the founding documents of the joint venture.[301]

As to the Czechoslovak Principles, again they leave the liquidation issue at the discretion of the parties[302] since Czechoslovak law makes no provision for closing out a company.[303]

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299. See Article 14, Paragraph 1 of the 1986 Law, infra Appendix G.

300. See Article 14, Paragraph 2 of the 1986 Law, infra Appendix G.

301. See Article 37 of the 1986 Law, infra Appendix G.

302. See Klein, supra note 49 at 4.

303. See "Key Provisions of Draft CSSR JV Law", Business Eastern Europe (2 November 1987) 349. It is expected that all remaining unanswered or problematic issues under the 1985 Principles will be soon settled by the forthcoming Czechoslovak joint venture code; see also "New CSSR JV Code: Some Progress with Tough Issues", Business Eastern Europe (2 November 1987) 348; and "CSSR JV Update: Services Included", Business Eastern Europe (2 May 1988) 137.

VIII. CONCLUSIONS

It has become apparent through the comparative study of the most important principles of joint venture legislation in the Soviet Union, Czechoslovakia and Poland that the current legal enactments are far from being technically perfect. Moreover, differentiations in legal constructions and in attitudes on specific points reflect underlying differences in reasoning or policies.

Changes in existing legislation should assume bolder positions and should comply with pragmatic approaches from the theoretical and practical points of view. The role of foreign direct investment should be clearly recognized as one of primordial importance within the framework of centrally planned state economies. Accordingly, the portion of joint ventures and general private investment in domestic economies should be left to grow larger through more attractive provisions and incentives. Joint ventures should no longer be considered as alien constructions operating parallel to existing nationalized economic structures; they should be accepted as important parts of the economies.

The legislation of each of the three countries we examined needs specific improvements. These improvements appear to come slowly but steadily.

The Soviet legislation undertook an innovative, flexible and decentralizing attitude in the form of a positive response to foreign investors' reactions and

criticisms. The new flexible attitude was concretized in enactment of Decree 1074 which improved a number of points, as we saw. However, Soviet joint ventures still require distinct legal structures and capitalization. Moreover, further coordination between Decree 48 and Decree 49 should be achieved.

The Polish legislation needs improvement in order to become more uniform. The 1982 and 1986 Laws should merge and, if not, should adopt more unified provisions. Finally, Czechoslovakia should adopt a distinct joint venture code instead of a muddled combination of generally inconcrete and legally non-binding guidelines for foreign investment, which the 1985 Principles contain.

All of the above is likely to occur soon.[304] Furthermore, the three countries would need:

- Free trade zones, following the Chinese or Hungarian models. This is likely to occur soon in the Soviet Union and Poland.[305]

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304. Ibid. See also "Polonian Rule Changes Likely to Delay JV Law", Business Eastern Europe (28 March 1988) 99.

305. The idea of exclusive economic zones in the USSR is under discussion among Soviet leaders. This point was raised by Oleg Bogomolov, Director of the Institute of Economics of the World Socialist System. The Baltic Republics and the Soviet Far East are suggested as appropriate locations; see Q. Peel, "Moscow Urged to Encourage Joint Ventures", The (London) Financial Times (cont'd.)

- Progressional establishment of convertible national currencies, in a later stage, in order to reflect real world market prices and values, and not only state policies.[306]

All of the above presuppose success of the structural domestic economic reforms which have been undertaken. Successful implementation of the joint venture legal framework requires further introduction of a great deal of market economy forces and principles into the host countries' nationalized economies. It is clear that all of the three

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(21 April 1988) 3. The idea of free trade zones is under discussion also in Poland. Possible locations would be the Szczecin, Swinoujscie and Gdynia port areas; see "Polish Free Trade Zones? Probably, But Be Patient", Business Eastern Europe (11 January 1988) 12, and "Polish Free Trade Zones Now Closer to Reality", Business Eastern Europe (2 May 1988) 139.

306. The currencies of the Soviet Union, Czechoslovakia and Poland are not convertible even between them, or inside Comecon. Only recently the Soviet Union and Czechoslovakia signed an agreement on limited convertibility of their currencies. They were the first CMEA Member-Countries to take this step; see "Focus on Financing: Czechoslovakia/USSR", Business Eastern Europe (7 March 1988) 80, and L. Colitt, "Moscow, Prague Agree Currency Convertibility", The (London) Financial Times (29 February 1988) 3. Moreover, recently Ivan Ivanov, Deputy Chairman of the State Foreign Economic Commission was one of the Soviet officials to openly discuss the possibilities and problems involved in free convertibility for the ruble; see "Soviets Openly Discuss Ruble Convertibility", Business Eastern Europe (4 July 1988) 212. Convertibility of the ruble, together with establishment of currency market is openly discussed by recent Soviet literature also: see, e.g., B. Vasil'ev, "Byt' li u nas valiutnomu rynku?" (Will There Be For Us A Currency Market?) (1988) Ekonomischeskaia Gazeta No. 26 at 21.

countries under discussion are now going through a transitional stage. Perestroika and the equivalent restructuring mechanisms in the other two countries have been triggered. Let us hope that nothing will stop implementation of the economic and political transformations which have begun.

It could be argued that extensive domestic reforms will produce economic disturbances, such as raising of prices within the countries, and will provoke uncontrollable reactions from the part of ordinary citizens.[307] But in the long run vigorous and dynamic economies would emerge.

It remains clear that as a result of the new conceptions and implemented legal mechanisms Eastern Europe now tends to be more open to foreign business than ever before. Time is needed for the new measures to be fully implemented. A positive approach full of understanding is needed for, whatever the evolution may be, Chernobyl has proved that it concerns and will affect the entire world.

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307. As it is widely known, the Polish government lost the referendum of November 29, 1987 about accelerating economic and political reform; see, e.g., "Poland: Vote Lost, But Reform Should Continue", Business Eastern Europe (7 December 1987) 385. Moreover, in October 1987 fears and rumors that a rise in prices could occur led to uncontrollable consumer reactions, such as the hoarding of food and other products; see B. Keller, "Russians, Fearing Rise in Prices, Hoard Food", The New York Times (30 October 1987) A7.

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APPENDIX A

Decree of the Presidium of the USSR Supreme Soviet

On Questions Concerning the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies.

The Presidium of the USSR Supreme Soviet decrees:

1 Joint ventures established in the territory of the USSR with participation of Soviet and foreign organizations, firms and management bodies shall pay tax on profit at the rate and in the order provided for by the USSR Council of Ministers. Tax shall be appropriated to the USSR national budget.

Joint ventures shall be exempt from tax on profit for the two initial years of their operation.

The USSR Ministry of Finance shall be authorized to reduce the tax rate or to completely exempt from tax individual payers.

2 Collection of the sums of the tax not paid in time shall be carried out conformably to the procedure prescribed in regard of foreign legal persons by the Rules on Collection of Delayed Taxes and Non-tax Payments, endorsed by the Decree of the Presidium of the USSR Supreme Soviet of January 26, 1981 (Vedomosti Verkhovnogo Soveta SSSR, 1981, No. 5, Art. 122).

3. Unless otherwise provided for by a treaty between the USSR and respective foreign state, the part of the profit due to a foreign partner in a joint venture shall be taxed, if transferred abroad, at the rate stipulated by the USSR Council of Ministers.

4 Land, entrails of the earth, water resources, and forests may be made available for use to joint ventures as for payment as well as free of charge.

5. Disputes of joint ventures, international amalgamations and organizations with Soviet state-owned, cooperative and other public organizations, their disputes among themselves, as well as disputes among partners in a joint venture, international amalgamation or organization over matters related to their activity shall be considered by the USSR courts or, upon agreement of the parties, by an arbitration tribunal, and in cases stipulated by the USSR legislation—by tribunals of state arbitration

In this connection Article 9 of the USSR Law of November 30, 1979 "On State Arbitration in the USSR" (Vedomosti Verkhovnogo Soveta SSSR, 1979, No. 49, Art 844) shall be amended to include after the words "and organizations" the words "joint ventures, international amalgamations and organizations of the USSR and other CMEA member-countries "

Chairman of the Presidium
of the USSR Supreme Soviet
A. GROMYKO

Secretary of the Presidium
of the USSR Supreme Soviet
T. MENTESHASHVILI

The Kremlin, Moscow, January 13, 1987 No 6362-XI

Source: (1987) Foreign Trade (English edition of Vneshniaia Torgovlia) Supplement to No. 5 at 10.

APPENDIX B

Decree of the USSR Council of Ministers

On the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations of the USSR and other CMEA Member-Countries.

For the purpose of intensification of the socialist economic integration, consolidation of the scientific, technological and industrial potentials of the member-countries of the socialist community, the USSR Council of Ministers hereby **decrees:**

1. The permanent bodies of the USSR Council of Ministers, USSR ministries and government agencies and Councils of Ministers of Union Republics to proceed actively in establishing in the Soviet Union joint ventures, international amalgamations and organizations of the USSR and other CMEA member-countries (hereinafter "joint ventures, international amalgamations and organizations").

I. Main Objectives and Procedure for Establishment of Joint Ventures, International Amalgamations and Organizations

2. Joint ventures shall be established to carry out production, scientific production, scientific tech-

nological and other economic activities in industry, science, agriculture, construction, trade, transportation and other fields of the national economy.

Joint ventures (production enterprises, trading firms, commercial introduction and service organizations) shall engage in economic activities on their own behalf using common socialist property in the interests of the partners therein.

International amalgamations shall be established to coordinate production, scientific production and other economic activities undertaken by their partners in industry, science, agriculture, construction, trade, transportation and other fields of the national economy.

International amalgamations shall maintain national ownership of the property of the partners and conduct their activities under the coordinated plans of the partners and the common plans of the international amalgamation. Where necessary, partners may partially merge their property to carry out economic activities. Partners may establish, on the basis of common socialist property, joint organizations (research, design, etc.) to conduct scientific research, develop designs and engage in other activities in their interests.

3 Joint ventures, international amalgamations and organizations shall be established in the USSR territory under interstate and intergovernmental treaties of the USSR

In cases provided by interstate or intergovernmental treaties of the USSR, individual joint ventures, international amalgamations and organizations of the USSR and CMEA member-countries may be established under an international treaty of the USSR of an interdepartmental character or under an economic contract.

Joint ventures, international amalgamations and organizations shall be guided in their activities by the Decree of the Presidium of the USSR Supreme Soviet of May 26, 1983 "On the Operation in the Territory of the USSR of Joint Economic Organizations of the USSR and other CMEA Member-Countries" (Vedomosti Verkhovnogo Soveta SSSR, 1983, No. 22, Art. 330), by the Decree of the Presidium of the USSR Supreme Soviet of January 13 1987 "On Questions concerning the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies,"* by the present Decree and other legislative acts of the Union of Soviet Socialist Republics and the Union Republics with exceptions provided for in interstate and intergovernmental agreements to which the USSR is a party.

4 Proposals for the establishment of joint ventures, international amalgamations and organizations together with drafts of contracts and statutes (hereinafter "foundation documents"), and in the case of a joint venture—with feasibility studies, shall be submitted by organizations concerned to ministries and government agencies, within the system of which they operate. Ministries and government agencies of the Union Republics shall submit such proposals to the Councils of Ministers of their Republics

The aforesaid ministries and government agencies of the USSR and Councils of Ministers of Union Republics shall agree upon the proposals with the USSR State Planning Committee, the USSR Ministry of Finance and other ministries and government agencies concerned.

The agreed proposals for the establishment of joint ventures shall be submitted to the USSR Council of Ministers, and in the case of international amalgamations and organizations—to the appropriate permanent body of the USSR Council of Ministers.

5. Ministries and government agencies, within the system of which operate Soviet partners in joint ventures, international amalgamations and organizations, shall set up such joint ventures, amalgamations and organizations with the purpose to improve the utilization of the scientific production potential of CMEA member-countries, to satisfy more fully domestic requirements for certain types of manufactured products, raw materials and foodstuffs, to attract advanced foreign equipment and technologies, management expertise, additional material and financial resources to the USSR national economy, to expand the national export sector, to reduce superfluous imports for freely convertible currency

II. Partners in, Property and Rights of Joint Ventures, International Amalgamations and Organizations

6. One or more Soviet enterprises (amalgamations and other organizations) which are legal entities, and one or more organizations of other CMEA member-countries which are legal entities may be partners in a joint venture, international amalgamation or organization

Where necessary, management bodies of the USSR and other CMEA member-countries may also be partners in joint ventures.

In these cases para. 17 of this Decree shall be applied with due regard to their competence as established by legislation.

7. Joint ventures, international amalgamations and organizations are legal entities under Soviet law They may, in their own name, contract, acquire proprietary and non-proprietary personal rights, undertake obligations, sue and be sued in courts of justice, state arbitration and in arbitration tribunals.

8. Joint ventures, international amalgamations and organizations shall have a statute approved by its partners.

The statute shall specify the nature and objectives of operation of such joint ventures, amalgamations and organizations, their legal addresses, the list of partners, the structure, composition and competence of management bodies, the decision-making procedure and the range of issues to be unanimously settled, as well as the liquidation procedure for joint ventures, amalgamations and organizations. The statute may incorporate other provisions related to the specific character of operation of the joint venture, international amalgamation or organization, unless these are contrary to Soviet law

The period of operation of a joint venture, international amalgamation and organization shall be specified by the partners in the foundation documents

9 As soon as the foundation documents come into force, joint ventures, international amalgamations and organisations established in the territory of the USSR shall be registered with the USSR Ministry of Finance and acquire the rights of a legal entity at the time of

* See Vedomosti Verkhovnogo Soveta SSSR 1987 No 2 Art 35

registration

A notification on the establishment of a joint venture, international amalgamation or organization shall be published in the press

10 Joint ventures, international amalgamations and organizations are entitled under Soviet legislation to own, use and dispose of their property in accordance with the objectives of their activities and the purpose of the property Their property shall not be requisitioned or confiscated by administrative decision.

The property rights of a joint venture, international amalgamation and organization shall be protected under Soviet legislative acts protecting state-owned Soviet organizations. Execution can be applied to the property of joint ventures, international amalgamations and organizations only by a decision of bodies empowered under USSR legislation to hear disputes involving such joint ventures, amalgamations and organizations.

The property of joint ventures, international amalgamations and organizations is subject to compulsory insurance with USSR insurance agencies.

11. If joint ventures, international amalgamations and organizations are reorganized their rights and obligations shall pass to the assignees.

12 Industrial property rights belonging to joint ventures, international amalgamations and organizations are protected by the Soviet law, including protection in the form of patents. The procedure for assignment of industrial property rights to a joint venture, international amalgamation and organization by partners therein and by a joint venture, international amalgamation and organization to partners therein, as well as for commercial working of these rights and their protection abroad is defined by the foundation documents.

13. Joint ventures, international amalgamations and organizations shall be liable on their obligations in all of their property The Soviet state and partners in joint ventures, international amalgamations and organizations shall not be liable on the obligations of such joint ventures, amalgamations and organizations, nor shall joint ventures, international amalgamations and organizations be liable on the obligations of the Soviet state and of the partners therein

14 Joint ventures, international amalgamations and organizations established in the territory of the USSR may set up representation offices, and joint ventures and organizations may also establish affiliates provided their foundation documents stipulate their right to do so

Affiliates of joint ventures and organizations set up with the participation of Soviet organizations in other CMEA member-countries may be established in the territory of the USSR in accordance with the rules which apply to the establishment of joint ventures and organizations

Affiliates of joint ventures and organizations established in the territory of the USSR and enjoying the status of legal entities shall not be liable on the obligations of joint ventures and organizations, nor shall these joint ventures and organisations be liable on the obligations of such affiliates.

15. Disputes of joint ventures, international amalgamations and organizations with Soviet state-owned, co-operative and other public organizations, their disputes among themselves, and disputes among partners in a joint venture, international amalgamation and organization over matters related to their activities, shall be considered by tribunals of State arbitration except where other bodies are authorized by legislation of the USSR to consider such disputes.

III. Operation of Joint Ventures, International Amalgamations and Organizations

16. The governing body of a joint venture, international amalgamation and organization is a Council (Board) consisting of persons appointed by the partners The decision-making procedure by the Council (Board) is defined by the foundation documents

The operational activities of a joint venture, international amalgamation and organization are governed by a Director General (Management) appointed by the Council (Board).

The Council (Board) and the Management shall be made up of citizens of participating countries The Director General of a joint venture, amalgamation, or organization shall be a citizen of the USSR.

17. A joint venture, international amalgamation and organization shall enter into relations with central state authorities of the USSR and of the Union Republics through authorities superior to the Soviet partner in such joint venture, amalgamation, or organization Their contacts with local government authorities and other Soviet organizations shall be direct

18. A joint venture, international amalgamation and organization are independent in developing and approving their business operation programmes. State bodies of the USSR shall not fix any mandatory plans for them

19. Shipping into and out of the USSR by a joint venture, international amalgamation or organization of goods and other property is effected under licences issued according to legislation of the USSR.

20 Joint ventures, international amalgamations and organizations shall settle their accounts and carry out financing operations in rubles, and keep their monetary assets in rubles on accounts with USSR banks under provision applicable to Soviet state-owned organizations.

21. Unless stipulated otherwise by interstate or intergovernmental agreements to which the USSR is a party, joint ventures, international amalgamations and organizations shall keep monetary assets in transferable rubles and in foreign currencies on accounts with the USSR Bank for Foreign Trade, the International Bank for Economic Cooperation and the International Investment Bank, and shall settle accounts in transferable rubles or in foreign currencies through the USSR Bank for Foreign Trade and the International Bank for Economic Cooperation.

22. The USSR Ministry of Finance by agreement with competent agencies of countries concerned, shall establish procedures and conditions for the conversion of currencies in connection with the operation of joint ventures, international amalgamations and organizations.

23. Joint ventures, international amalgamations and organizations shall maintain business, bookkeeping and statistical accounting in accordance with the standards established in the USSR for state-owned Soviet enterprises. The forms of such accounting and bookkeeping

shall be jointly specified by the Ministry of Finance and the USSR Central Board of Statistics.

Joint ventures, international amalgamations and organizations shall be held responsible under Soviet law for complying with the accounting and bookkeeping procedure and for the correctness thereof.

24. Joint ventures, international amalgamations and organizations are entitled to maintain correspondence, as well as telegraph, teletype and telephone communications with organizations in other countries.

IV. *Special Features of Operation of Joint Ventures*

25. The property of a joint venture is the common socialist property of the USSR and of the CMEA member-country concerned.

26. Joint ventures shall have independent balance and operate on the basis of full cost accounting, self-support and self-financing.

27 The amount of the authorized fund of a joint venture, the shares of partners therein and the procedure for raising the authorized fund (including foreign currency contents) are defined by the foundation documents.

The authorized fund of a joint venture is formed from contributions made by the partners. It can be replenished by using profits derived from business operation of the joint venture and, if necessary, through additional contributions by the partners.

Contributions to the authorized fund of a joint venture may include buildings, structures, equipment and other assets, rights to use land, water and other natural resources, buildings, structures and equipment, as well as other proprietary rights (including those to work inventions and use know-how), money assets in the currencies of the partners' countries, in transferable rubles and in freely convertible currency

The contribution of partners to the authorized fund of a joint venture is evaluated in rubles according to foreign trade prices specified by regulations in force within the CMEA In the absence of such prices the value of contributed property shall be agreed by the partners.

28 Equipment, materials, and other property imported to the USSR by foreign partners in a joint venture as their contribution to the authorized fund of a joint venture are exempt from custom duties.

29 Partners in a joint venture shall have the right to assign by common consent, their shares in the joint venture fully or partially to third parties. In each particular case the assignment is effected with an endorsement of the State Foreign Economic Commission of the USSR Council of Ministers. Soviet partners have the priority right to acquire shares of foreign partners.

30 Priority shall be given to joint ventures in regard to supplies and marketing of their products through the wholesale system or through the supply system of the appropriate branch of the USSR economy, or through appropriate Soviet foreign trade organizations

Where joint ventures are incorporated into the USSR system of supplies, they shall obtain and sell products and services in the USSR at wholesale or contractual prices according to the procedure established in the USSR

Where joint ventures receive supplies through USSR foreign trade organizations, they shall obtain and sell products and services at foreign trade prices

Specific forms of providing supplies to joint ventures and of the marketing of their products and services shall be stipulated in the foundation documents.

31. The design and construction of joint ventures' facilities, including those intended for social needs, shall be effected through contractual arrangements and paid for with the joint ventures' own or loan money. Project designs and itemised lists of construction projects are approved by joint ventures. Prior to approval, designs shall be agreed upon under the procedure establisned by the USSR State Building Committee.

Orders from joint ventures shall receive priority both as regards limits on construction/assembly work to be carried out by Soviet construction/assembly organizations, and as regards material resources required for the construction.

32. Cargoes of joint ventures shall be transported under the procedure established for Soviet organizations.

33. When conducting export and import operations in connection with their activities, joint ventures shall have the right to agree prices for their products and to contract to import with payments to be made out of their own or loan foreign currency assets.

The aforesaid contracts may be also concluded by foreign trade organizations under agreements with joint ventures.

34. The State Bank of the USSR and the Bank for Construction of the USSR have the right to establish, where necessary, a special procedure for application for credits by, and granting credits to, joint ventures, the terms made available to them to be at least as favourable as those given to comparable Soviet state-owned organizations.

Joint ventures, where necessary, may use credits on commercial terms in transferable rubles and in foreign currencies from the USSR Bank for Foreign Trade, the International Investment Bank or the International Bank for Economic Cooperation, or with the consent of the USSR Bank for Foreign Trade, from foreign banks or firms.

35. USSR banks shall be authorized to check if credits extended to a joint venture are used for specified purposes, are secured, and repaid in due time.

36 Products of a joint venture shall be allotted among the partners in proportion to each partner's share of the authorized fund or by mutual consent. The foundation documents shall define the allotment procedure

37 A joint venture shall make depreciation payments under regulation applying to state-owned Soviet organizations unless a different system is stipulated by the foundation documents. The sums thus accumulated shall remain at the joint venture's disposal.

38 A joint venture shall form a reserve fund and other funds necessary for its operation and the social needs of its personnel

Deductions from profits shall be added to the reserve fund until the latter totals 25 per cent of the authorized fund of the joint venture. The amount of annual deductions shall be defined by the foundation documents.

The list of other funds and the way they are formed and used shall be specified by the foundation documents

39 The profits of a joint venture, less the amount to be appropriated by the USSR national budget and sums

allocated to form and build up the joint venture s funds shall be distributed among the partners in proportion to each partner's share in the authorized fund, unless otherwise stipulated in the foundation documents

Profits in freely convertible currencies exceeding the requirements of a joint venture may be distributed in the same proportion (subject to a decision of the governing body) with appropriate reimbursement in transferable rubles

40. Foreign partners in a joint venture are guaranteed that amounts in transferable rubles and in foreign currencies due to them as their share in distributed profits of the joint venture are transferable abroad, as well as the share of distributed profits due to a partner in freely convertible currencies.

41 In order to enable partners in a joint venture to exercise their supervision rights, the foundation documents shall stipulate a procedure for providing partners with information related to the operation of a joint venture, the status of its property, its profits and losses

A joint venture may set up an auditing service to be formed in the manner established by the foundation documents

42 The auditing of finance, business and commercial activities of joint ventures shall be carried out for a consideration by the Soviet auditing organization operating on a self-supporting basis

V. Taxation of Joint Ventures

43 Joint ventures shall pay taxes at the rate of 30 per cent of their profit remaining after deductions to their reserve and other funds intended for the development of production, science and technology Sum paid in taxes shall be appropriated to the USSR national budget.

Joint ventures shall be exempt from taxes on their profits during the two initial years of their operation

The USSR Ministry of Finance shall be authorized to reduce the tax rate or to completely exempt from tax individual payers

44 The assessment of the profit tax shall be effected by a joint venture

The amounts of the advance tax payment for a current year shall be declared by a joint venture on the basis of its financial plans for a current year

The assessment of the final tax amount on the profit, actually made during the expired financial year, shall be effected by the joint venture not later than March 15 of the year following the year under review

45 Financial authorities are empowered to verify tax calculations prepared by joint ventures

Overpaid taxes for the expired year can either be set off against current tax payments, or refunded to the payer at the latter's request.

46 The amount of the profit tax declared for the current year shall be transferred to the budget by equal instalments not later than 15 days before the end of each quarter The final amount shall be paid not later than April 1 of the year following the year under review.

Delayed payments shall be charged at the rate of 0 05 per cent for every day of delay

Collection of the sums of the tax not paid in time shall be carried out conformably to the procedure prescribed in regard of foreign legal persons by the Rules on Collection of Delayed Taxes and Non-tax Payments, endorsed by the Decree of the Presidium of the USSR Supreme Soviet of January 26, 1981 (Vedomosti Verkhovnogo Soveta SSSR, 1981, No 5 Art 122)

47 A joint venture has the right to appeal against actions of financial authorities in regard to tax collection An appeal is lodged with the financial authority which verifies the tax calculation Each case shall be decided within one month from the day the appeal is lodged

A joint venture is entitled to appeal against the ruling before a superior financial authority within one month from the day of the ruling.

The lodging of an appeal does not stop paying the tax

48 Unless otherwise provided for by a treaty between the USSR and respective foreign state, the part of the profit due to a foreign partner in a joint venture shall be taxed, if transferred abroad, at the rate of 20 per cent

49 The aforementioned taxation procedure is applied to profits made by joint ventures established in the territory of the USSR and by located in the USSR affiliates of joint ventures established with the participation of Soviet organizations and management bodies in other countries, as a result of their operation both in the territory of the USSR, on its continental shelf, in the USSR economic zone and in the territory of other countries.

50. Regulations regarding the taxation of joint ventures shall be issued by the USSR Ministry of Finance

VI. Special Features of Operation of International Amalgamations and Organizations

51. International amalgamations and organizations shall have independent balance (budget) and shall operate on the participants' contributions

52. A financial fund evaluated in rubles and transferable rubles shall be formed to finance the operation of international amalgamations and organizations including staff operating expenses and reimbursement for business trips of specialists in connection with joint activities

The size of the financial fund of an international amalgamation or organization and the procedure for its raising (including foreign currency contents) shall be specified in the statute of the international amalgamation and organization.

Monetary assets in the currencies of participating countries, in transferable rubles and in freely convertible currencies may be appropriated for the financial fund

Contributions of partners to the property of the joint organization may also include buildings structures, equipment and other assets, rights to use buildings, structures, equipment, as well as other proprietary rights (including those to work inventions and use know-how).

Assets contributed by partners as their shares are evaluated according to foreign trade prices specified by regulations in force within the CMEA In the absence of such prices the value of contributed property shall be agreed by the partners.

Soviet partners in international amalgamations and organizations may contribute to the financial fund out of credits granted to them by the USSR State Bank and the USSR Bank for Foreign Trade.

53. Foreign partners are guaranteed that sums in transferable rubles and in foreign currency due to them as a result of the liquidation of an international amalgamation and organization are transferable to their countries.

54. When conducting export and import operations in connection with their activities, international amalgamations and organizations shall have the right to agree prices for products of cooperation and to contract to import with payments to be made out of their own or loan foreign currency assets.

Contracts for reciprocal deliveries of products of cooperation within an international amalgamation and organization shall be concluded by the partners.

55. International amalgamations and organizations shall have the right to agree prices and contract on their own behalf to import licences, know-how, samples, supplies, process equipment, and other products and services necessary for their operation.

Joint organizations also have the right to agree prices and contract on their own behalf to export scientific and technological developments.

The aforesaid contracts may also be concluded by foreign trade organizations under agreements with international amalgamations and organizations.

56. In conducting their own economic activities on the basis of the property merged by the partners therein parallel with co-ordination of activities of the partners, international amalgamations shall be guided by applicable provisions of this Decree in regard to the establishment and operation of joint ventures in the USSR territory.

VII. Personnel of Joint Ventures, International Amalgamations and Organizations

57 The pay, routine of work and recreation, social security and social insurance of Soviet employees of joint ventures, international amalgamations and organizations shall be regulated by Soviet legislation. This legislation shall also apply to foreign citizens employed at joint ventures, international amalgamations and organizations, unless otherwise stipulated by an interstate or intergovernmental treaty to which the USSR is a party

58 Joint ventures, international amalgamations and organizations shall make contributions to the USSR national budget for state-sponsored social insurance (security) of Soviet and foreign employees, in accordance with rates established for state-owned Soviet organizations.

59 The management of a joint venture shall conclude collective agreements with trade-union organizations formed at the enterprise. The contents of these agreements including provisions for the social needs of the personnel, are defined by Soviet legislation and by the foundation documents.

60 The pay of foreign employees of a joint venture, international amalgamation and organization is subject to income tax at the rate and in accordance with the procedure set up by the Decree of the Presidium of the USSR Supreme Soviet of May 12, 1978, "On the Income Tax Levied on Foreign Legal and Physical Persons" (Vedomosti Verkhovnogo Soveta SSSR, 1978, No. 20, Art. 313). The unutilized portion of foreign employees' pay may be transferred abroad in the appropriate foreign currency.

VIII. Liquidation of Joint Ventures, International Amalgamations and Organizations

61. A joint venture, international amalgamation or organization may be liquidated in cases and in the manner stipulated by the foundation documents, and also by a decision of the USSR Council of Ministers if the activities thereof are not consistent with the objectives defined by these documents. A notification of liquidation of a joint venture, international amalgamation and organization shall be published in the press.

62. In the case of liquidation or upon withdrawal from a joint venture, international amalgamation or organization the foreign partner shall have the right to return his share in money or in kind pro rata to the residual balance value of his contribution at the moment of liquidation of the joint venture, amalgamation or organization, after discharging his obligations to the Soviet partners and third parties.

63. The liquidation of a joint venture, international amalgamation and organization shall be registered with the USSR Ministry of Finance.

• • •

64. This Decree shall also apply to establishment in the territory of the USSR of joint ventures, international amalgamations and organizations with socialist non-CMEA member-countries. Special rules for its application shall be established by the State Foreign Economic Commission of the USSR Council of Ministers, and where necessary, appropriate proposals shall be submitted to the USSR Council of Ministers.

65. Decree of the USSR Council of Ministers of May 26, 1983, No. 464 "On the Revision Procedure for Proposals regarding the Establishment of Joint Economic Ventures of the USSR and other CMEA Member-Countries in the Territory of the USSR" (SP SSSR, 1983, No. 16, Art. 80) is hereby annulled.

Chairman of the USSR Council of Ministers
N. RYZHKOV

Manager of Operations of the USSR Council of Ministers
M. SMIRTIUKOV

The Kremlin, Moscow, January 13, 1987, No. 48

Source: (1987) Foreign Trade (English edition of Vneshniaia Torgovlia) Supplement to No. 5 at 10-15.

APPENDIX C

Decree of the USSR Council of Ministers

On the Establishment in the Territory of the USSR and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries

For the purpose of further development of trade, economic, scientific and technical cooperation with capitalist and developing countries on a stable and mutually beneficial basis, the USSR Council of Ministers hereby decrees

I. General Provisions

1 Joint ventures with the participation of Soviet organizations and firms of capitalist and developing countries (hereinafter "joint ventures") shall be established in the territory of the USSR with the authorization of the USSR Council of Ministers and on the basis of agreements concluded by partners therein

Joint ventures shall be governed in their activities by the Decree of the Presidium of the USSR Supreme Soviet of January 13, 1987, "On Questions Concerning the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies,"* by this Decree and other legislative acts of the Union of Soviet Socialist Republics and Union Republics with exceptions provided for by interstate and intergovernmental agreements, which the USSR is a party to

2 Proposals in respect of the establishment of joint ventures with feasibility studies and draft foundation documents annexed thereto shall be submitted by Soviet organizations concerned to Ministries and government agencies, under which they operate Ministries and government agencies of the Union Republics shall submit such proposals to the Councils of Ministers of their Republics

The aforesaid Ministries and government agencies of the USSR and the Councils of Ministers of Union Republics shall agree upon the proposals with the USSR State Planning Committee, the USSR Ministry of Finance and other Ministries and government agencies concerned

The agreed proposals for the establishment of joint ventures shall be submitted to the USSR Council of Ministers

3 Ministries and government agencies, within the system of which Soviet partners in joint ventures operate, shall set up joint ventures with the purpose to satisfy more fully domestic requirements for certain types of manufactured products, raw materials and foodstuffs, to attract advanced foreign equipment and technologies, management expertise, additional material and financial resources to the USSR national economy, to expand the national export sector and to reduce superfluous imports

II. Partners in, Property and Rights of Joint Ventures

4 One or more Soviet enterprises (amalgamations and other organizations) which are legal entities, and one or more foreign firms (companies, corporations and other organizations) which are legal entities may be partners in a joint venture

5 The share of the Soviet side in the authorized fund of a joint venture shall be not less than 51 per cent

6 Joint ventures are legal entities under Soviet law They may, in their own name, contract acquire proprietary and non-proprietary personal rights, undertake obligations, sue and be sued in courts of justice and in arbitration tribunals Joint ventures shall have independent balance and operate on the basis of full cost accounting, self support and self financing

7 A joint venture shall have a statute approved by its partners The statute shall specify the nature of the joint venture, the objectives of its operation, its legal address the list of partners, the amount of the authorized fund, the shares of partners therein, the procedure for raising the authorized fund (including foreign currency contents), the structure composition and competence of the venture s management bodies, the decision making procedure, the range of issues to be unanimously settled, and the joint venture liquidation procedure The statute may incorporate other provisions related to the specific character of joint venture s operations unless these are contrary to Soviet law

8 The period of operation of a joint venture shall be specified by its partners in an agreement on the establishment thereof or in the joint venture's statute (hereinafter "foundation documents)

9 As soon as the foundation documents come into force joint ventures established in the territory of the USSR shall be registered with the USSR Ministry of Finance and acquire the rights of a legal entity at the time of registration A notification on the establishment of joint ventures shall be published in the press

10 The authorized fund of a joint venture is formed from contributions made by the partners It can be replenished by using profits derived from business operation of the joint venture and, if necessary, through additional contributions by the partners

11 Contributions to the authorized fund of a joint venture may include buildings, structures, equipment and other assets, rights to use land, water and other natural resources, buildings, structures and equipment, as well as other proprietary rights (including those to work inventions and use know-how), money assets in the currencies of the partners' countries and in freely convertible currencies

12 The contribution of the Soviet partner to the authorized fund of a joint venture is evaluated in rubles on the basis of agreed prices with due regard to world market prices The contribution of the foreign partner is evaluated in the same manner, with the value of the contribution being converted to rubles at the official exchange rate of the USSR State Bank as of the date of signing the joint venture agreement or as of any other date agreed by the partners In the

* See Vedomosti Verkhovnogo Soveta SSSR, 1987, No 2 Art 35

absence of world market prices the value of contributed property is agreed by the partners.

13 Equipment, materials and other property imported into the USSR by foreign partners in a joint venture as their contribution to the authorized fund of the venture are exempt from custom duties

14 The property of a joint venture is subject to compulsory insurance with USSR insurance agencies

15 A joint venture is entitled under Soviet legislation to own, use and dispose of its property in accordance with the objectives of its activities and the purpose of the property The property of a joint venture shall not be requisitioned or confiscated in the administrative order

The property rights of a joint venture shall be protected under Soviet legislation protecting state-owned Soviet organizations Execution can be applied to the property of a joint venture only by a decision of bodies empowered under USSR legislation to hear disputes involving joint ventures

16 Partners in a joint venture shall have the right to assign by common consent their shares in the joint venture fully or partially to third parties In each particular case the assignment is effected with an endorsement of the State Foreign Economic Commission of the USSR Council of Ministers Soviet partners have the priority right to acquire shares of foreign partners

If a joint venture is reorganized its rights and obligations shall pass to the assignees

17 Industrial property rights, belonging to joint ventures are protected by the Soviet law, including protection in the form of patents The procedure for the assignment of industrial property rights to a joint venture by partners therein and by a joint venture to partners therein, as well as for commercial working of those rights and their protection abroad is defined by the foundation documents

18 A joint venture shall be liable on its obligations in all of its property

The Soviet State and the partners in a joint venture shall not be liable on its obligations nor shall a joint venture be liable on the obligations of the Soviet State and of the partners in the venture

Affiliates of joint venture established in the territory of the USSR, which are legal entities, shall not be liable on the obligations of joint ventures, nor shall joint ventures be liable on the obligations of such affiliates

19 Joint ventures established in the territory of the USSR may set up affiliates and representation offices provided their foundation documents stipulate their right to do so

Affiliates of joint ventures set up with the participation of Soviet organizations in other countries shall be established in the territory of the USSR in accordance with the rules which apply to the establishment of joint ventures

20 Disputes between a joint venture and Soviet state-owned cooperative and other public organizations, disputes among joint ventures, and disputes among partners in a joint venture over matters related to its activities shall be settled according to legislation of the USSR either by the USSR courts or by common consent of both sides, by an arbitration tribunal

III *Operation of Joint Ventures*

21 The governing body of a joint venture is a Board consisting of persons appointed by the partners. Its decision-making procedure is defined by the foundation documents

The operational activities of a joint venture are governed by a Management consisting of Soviet and foreign citizens

The Chairman of the Board and the Director-General shall be citizens of the USSR

22. A joint venture shall enter into relations with central state authorities of the USSR and of the Union Republics through authorities superior to the Soviet partner in the joint venture. Its contacts with local government authorities and other Soviet organizations shall be direct

23 A joint venture is independent in developing and approving its business operation programmes State bodies of the USSR shall not fix any mandatory plans for a joint venture nor shall they guarantee a market for its products

24 A joint venture is entitled to transact independently in export and import operations necessary for its business activities, including export and import operations in the markets of CMEA member-countries

The aforementioned export and import operations may al so be effected through Soviet foreign trade organizations or marketing networks of foreign partners under contractual arrangements

Shipping into and out of the USSR by a joint venture of goods and other property is effected under licences issued according to legislation of the USSR

A joint venture is entitled to maintain correspondence, as well as telegraph, teletype and telephone communications with organizations in other countries

25 All foreign currency expenditures of a joint venture including transfer of profits and other sums due to foreign partners and specialists shall be covered by proceeds from sales of the joint venture's products on foreign markets

26 Sales of products of a joint venture on the Soviet market and supplies to the joint venture from this market of equipment, raw and other materials, components, fuel, energy and other produce shall be effected through respective Soviet foreign trade organizations and paid in rubles on the basis of contractual prices with due regard to world market prices

27 If necessary, a joint venture may use credits on commercial terms

in foreign currency — from the USSR Bank for Foreign Trade or, with its consent from foreign banks and firms,

in rubles — from the USSR State Bank or the USSR Bank for Foreign Trade

28 The USSR State Bank or the USSR Bank for Foreign Trade shall be authorized to check if credits extended to a joint venture are used for specified purposes, are secured and repaid in due time

29 Monetary assets of a joint venture shall be deposited on its ruble account or currency account with the USSR State Bank and the USSR Bank for Foreign Trade respect ively and shall be used for the purposes of the joint venture's operations The money on the accounts of the joint venture shall bear interest

in foreign currency — depending on the world money market rates,

in rubles — on terms and according to the procedure specified by the USSR State Bank

Exchange rates fluctuations regarding foreign currency accounts of joint ventures and their operations in foreign

currencies shall be carried to their profit-and-loss accounts

30 A joint venture shall form a reserve fund and other funds necessary for its operation and for the social needs of its personnel

Deductions from profits shall be added to the reserve fund until the latter totals 25 per cent of the authorized fund of the joint venture The amount of annual deductions to the reserve fund shall be defined by the foundation documents

The list of other funds and the way they are formed and used shall be specified by the foundation documents

31 The profits of a joint venture, less the amounts to be appropriated by the USSR national budget and sums allocated to form and replenish the joint venture's funds shall be distributed among the partners in proportion to each partner's share in the authorized fund

32 Foreign partners in a joint venture are guaranteed that amounts due to them as their share in distributed profits of the joint venture are transferable abroad in foreign currency

33 Joint ventures shall make depreciation payments under regulations applying to state-owned Soviet organizations unless a different system is stipulated by the foundation documents The sums thus accumulated shall remain at the joint venture's disposal

34 The design and construction of joint venture's facilities, including those intended for social needs, shall be effected through contractual arrangements and paid for with the joint venture's own or loan money Prior to approval, designs shall be agreed upon under the procedure established by the USSR State Building Committee Orders from joint ventures shall receive priority both as regards limits on construction/assembly work to be carried out by Soviet construction/assembly organizations and as regards material resources required for the construction

35 Cargoes of joint ventures shall be transported under the procedure established for Soviet organizations

IV Taxation of Joint Ventures

36 Joint ventures shall pay taxes at the rate of 30 per cent of their profit remaining after deductions to their reserve and other funds intended for the development of production, science and technology Sums paid in taxes shall be appropriated to the USSR national budget

Joint ventures shall be exempt from taxes on their profits during the two initial years of their operation

The USSR Ministry of Finance shall be authorized to reduce the tax rate or to completely exempt from tax individual payers

37 The assessment of the profit tax shall be effected by a joint venture

The amounts of the advance tax payment for a current year shall be declared by a joint venture on the basis of its financial plans for a current year The assessment of the final tax amount on the profit, actually made during the expired financial year, shall be effected by a joint venture not later than March 15 of the year, following the year under review

38 Financial authorities are empowered to verify tax calculations prepared by joint ventures

Overpaid taxes for the expired year can either be set off against current tax payments, or refunded to the payer at the latter's request

39 The amount of the profit tax declared for the current year shall be transferred to the budget by equal instalments not later than 15 days before the end of each quarter The final amount shall be paid not later than April 1 of the year following the year under review

Delayed payments shall be charged at the rate of 0 05 per cent for every day of delay

Collection of the sums of the tax not paid in time shall be carried out conformably to the procedure prescribed in regard of foreign legal persons by the Rules on Collection of Delayed Taxes and Non tax Payments endorsed by the Decree of the Presidium of the USSR Supreme Soviet of January 26, 1981 (Vedomosti Verkhovnogo Soveta SSSR 1981, No 5, Art 122)

40 A joint venture has the right to appeal against actions of financial authorities in regard to tax collection An appeal is lodged with the financial authority which verifies the tax calculation Each case shall be decided within one month from the day the appeal is lodged

A joint venture is entitled to appeal against this ruling before a superior financial authority within one month from the day of the ruling

The lodging of an appeal does not stop paying the tax

41 Unless otherwise provided for by a treaty between the USSR and respective foreign state, the part of the profit due to a foreign partner in a joint venture shall be taxed if transferred abroad, at the rate of 20 per cent

42 The aforementioned taxation procedure is applied to income made by joint ventures established in the territory of the USSR and by located in the USSR affiliates of joint ventures set up with the participation of Soviet organizations in other countries, as a result of their operations both in the territory of the USSR, on its continental shelf, in the USSR economic zone, and in the territory of other countries

43 Regulations regarding the taxation of joint ventures shall be issued by the USSR Ministry of Finance

V. Supervision of Joint Ventures' Operations

44 In order to enable partners in a joint venture to exercise their supervision rights, the foundation documents shall stipulate a procedure for providing partners with information related to the operation of the joint venture the state of its property, its profits and losses

A joint venture may set up an auditing service to be formed in a manner defined by the foundation documents

45 Joint ventures shall maintain business, bookkeeping and statistical accounting in accordance with the standards established in the USSR for state-owned Soviet enterprises The forms of such accounting and bookkeping shall be jointly specified by the USSR Ministry of Finance and the USSR Central Board of Statistics

Joint ventures shall be held responsible under Soviet law for complying with the accounting and bookkeeping procedure and for the correctness thereof

Joint ventures shall not submit any accounting or business information to the state or other authorities of foreign countries

46 The auditing of finance, business and commercial activities of joint ventures shall be carried out for a consideration by the Soviet auditing organization operating on a self-supporting basis

VI. Personnel of Joint Ventures

47. The personnel of joint ventures shall consist mainly of Soviet citizens. The management of a joint venture shall conclude collective agreements with trade union organization formed at the enterprise. The contents of these agreements including provisions for the social needs of the personnel are defined by Soviet legislation and by the foundation documents

48 The pay, routine of work and recreation, social security and social insurance of Soviet employees of joint ventures shall be regulated by Soviet legislation This legislation shall also apply to foreign citizens employed at joint ventures, except for matters of pay, leaves, and pensions which are stipulated by a contract signed with each foreign employee

The USSR State Committee for Labour and Social Affairs and the All-Union Central Council of Trade Unions shall be authorized to adopt special rules for the application of Soviet social insurance legislation to foreign employees of joint ventures.

49. A joint venture shall make contributions to the USSR national budget for state-sponsored social insurance of Soviet and foreign employees, as well as payments for pensions for Soviet employees in accordance with rates established for state-owned Soviet organizations. Contributions to cover foreign employees' pensions shall be transferred to respective funds in the countries of their permanent residence (in these countries' currencies)

50 The pay of foreign employees of a joint venture is subject to income tax at the rate and in accordance with the procedure set up by the Decree of the Presidium of the USSR Supreme Soviet of May 12, 1978 "On the Income Tax Levied on Foreign Legal and Physical Persons" (Vedomosti Verkhovnogo Soveta SSSR, 1978, No. 20, Art. 313). The unutilized portion of foreign employees' pay may be transferred abroad in foreign currency.

VII. Liquidation of Joint Ventures

51. A joint venture may be liquidated in cases and in the manner stipulated by the foundation documents, and also by a decision of the USSR Council of Ministers if the activities thereof are not consistent with the objectives defined by these documents A notification of a liquidation of a joint venture shall be published in the press

52. In the case of liquidation of a joint venture or upon withdrawal from it, the foreign partner shall have the right to return his contribution in money or in kind pro rata to the residual balance value of this contribution at the moment of liquidation of the joint venture, after discharging his obligations to the Soviet partners and third parties

53 The liquidation of a joint venture shall be registered with the USSR Ministry of Finance

Chairman of the USSR Council of Ministers
N. RYZHKOV

Manager of Operations of the USSR Council of Ministers
M. SMIRTIUKOV

The Kremlin, Moscow, January 13, 1987, No 49

Source: (1987) Foreign Trade (English edition of Vneshniaia Torgovlia) Supplement to No. 5 at 16-19.

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APPENDIX D

SOVIET UNION

DECREE No 1074

OF THE USSR COUNCIL OF MINISTERS

ON ADDITIONAL MEASURES TO IMPROVE THE COUNTRY'S EXTERNAL ECONOMIC ACTIVITY IN THE NEW CONDITIONS OF ECONOMIC MANAGEMENT

(17 September 1987)

Excerpts

On the further Development of Cooperation with Firms in the Capitalist and Developing Countries and Improvement of the Work on the Establishment and Operation of Joint Ventures and Lines of Production

With the aims of consistently realizing the CPSU's strategical course on using the advantages presented by the world division of labour, of consolidating the USSR's positions in international trade and applying the achievements of world science and technology in the national economy it is considered necessary to substantially invigorate the activity of the USSR's ministries, departments, enterprises and organizations in developing cooperation with the capitalist and developing countries

The ministries and departments of the USSR and the Councils of Ministers of Union republics are granted the right to independently take decisions on setting up on Soviet territory joint ventures together with firms in the capitalist and developing countries

It is established that a joint venture by agreement with Soviet enterprises and organizations shall determine the kind of currency to be paid in settlements for products realized and goods purchased as well as the procedure for realizing its products on the Soviet market and for shipping goods from this market

By agreement between the participants in a joint venture their contributions to be authorized fund may be assessed in both Soviet and foreign currency

It is considered expedient to appreciably expand the country's cooperation with the capitalist and developing countries firms abroad in the fields of science and technology, trade, finance, services, tourism and advertising and with this purpose in mind to practise the establishment of joint research and design organizations, engineering, sales and advertising firms, joint servicing and repair of exported machinery, sending of skilled specialists and workers, purchase of shares, bonds and other securities, their issue and floatation

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On the Further Development of Economic Methods for Managing the Country's External Economic Ties

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With a view to raising the interest of foreign partners in setting up joint ventures on the territory of the USSR, it will be possible to exempt these ventures from paying tax on profits during the first two years from the moment of showing declared profits.

Source: United Nations Economic Commission for Europe, East West Joint Ventures; Economic, Business, Financial and Legal Aspects (New York: United Nations Publications, 1988) at 189.

APPENDIX E

PRINCIPLES GOVERNING THE ESTABLISHMENT AND ACTIVITIES OF JOINT COMPANIES CONSISTING OF CZECHOSLOVAK CORPORATIONS AND COMPANIES FROM NON-SOCIALIST COUNTRIES

I. GENERAL PRINCIPLES

I.1. Fields wherein Common Organisations May Be Active

Common organisations may be created and may be active only in the field of industrial production (of the Czechoslovak national economy) and in the sphere of tourism.

I.2. Participants in Joint Ventures

Only the following may participate in a joint venture (common organisation), to wit:

a) Czechoslovak manufacturing socialist organisations (herein- after referred to as "the Czechoslovak participant"); and

b) foreign physical persons or corporations whose domicile and/or seat (place of business) is in a non socialist country (hereinafter referred to as "the foreign participant").

I.3. Legal Form

Legal relations dealing with the creation, activities and/or winding up of common organisations must be subject to Czechoslovak law. A common organisation may be created as a body corporate in the form of either:

a) a company limited by shares (under the Companies Act. No. 243 of 1949, Coll.); or

b) an association (under Secs. 625 ff. of the International Trade Code No. 101/1963, Coll. — i. e. the Legal Relations in International Trade Act, 1963).

I.4. Relations between the Participants

Relations between the participants, more particularly their basic rights and duties will be regulated in the memoranda and articles of incorporation in accordance with Czechoslovak legislation.
However:

a) a foreign participant cannot hold a share of more than forty nine (49) per cent in the corporate capital;

b) the articles of incorporation of the organisation (company limited by shares or association) will ensure a reasonable participation of the foreign participant in the management, production and sale of the organisation;

c) the foreign investment may consist of machinery and equipment, things material determined in kind, documentation, technological process, inventions, know how, technical personnel (staff) or financial means,

d) the common organisation will be wound up in accordance with Czechoslovak legislation. More particulars will be included into the memoranda or articles of incorporation.

1.5. State Permission and Registration

1.5.1. Czechoslovak participants may not enter into a joint venture, unless a State permission by their central government body is granted. Such authority must secure in advance an approval by the State Planning Commission, Federal Ministry of Finance, Federal Ministry of Foreign Trade and Czechoslovak State Bank.

1.5.2. A common organisation will not become a legal entity until entered into the Register of Commerce (Compoanies Register).

1.6. Bodies of the Common Organisation and Their Decision Taking

Particulars regulating the bodies of individual common organisations, their creation (election), composition and powers shall be included in the articles of incorporation, or the memoranda. Provided that, the presiding members in such bodies may be only Czechoslovak nationals.

1.7. Responsibility for Liabilities

Czechoslovak State or other Czechoslovak bodies corporate shall not be responsible for liabilities of the common organisation or of the Czechoslovak participants therein. On the other hand, the common organisations will not be responsible for the liabilities of Czechoslovak State or other Czechoslovak bodies corporate. Obligations arising under the respetcive rules of law are not affected thereby.

II. GOVERNING FINANCIAL AND ECONOMIC PRINCIPLES

II.1. Financial Management

II.1.1. Financial management will be governed by the principles incorporated into the memboranda or articles of incorporation. These principles will abide by rules aplicable to Czechoslovak economic organisations.

II.1.2. The earnings of the common organisation will be used for

a) payment of taxes and duties (prescribed contributions into the State budget or State funds);

b) contributions into corporate funds of the common organisation (such as reserve fund, cultural and social fund, remunerations fund etc.).

II.1.3. The balance of earnings remaining after payments under the preceding paragraph, may be distributed among the participants on a pro rata basis. A loss, if any, will be also borne by the participants on this basis.

II.1.4. Unless otherwise agreed in the articles of incorporation, contributions into individual corporate funds will be governed by the rules applicable to Czechoslovak economic organisations.

II.1.5. Financing of the Common Organisation

a) The basic source, from which the fixed assets and stock of the common organisation will be financed, are the member's paid up shares and the capital of the organisation, acquired during its activities.

b) Cost and overhead of the common organisation will be covered from its income.

c) Investment (other than financial — i.e. acquisition of land, construction, equipment etc.) is neither regulated nor restricted.

e) Investment abroad will not be possible, unless approved by the respective Czechoslovak authorities.

d) In order to finance its activites, the common organisation may take credit with banks.

II.2. Depreciation of Fixed Assets

II.2.1. Fixed assets in use of the common organisation during the performance of its activities will be depreciated in accordance with rules contained in Czechoslovak legislation and applicable to Czechoslovak economic organisations. Exceptions, if any, may be allowed by the Federal Ministry of Finance.

II.2.2. Depreciations are considered as a source of finance for the common organisation.

II.3. Accounting and Statistical Data

In principle, accounting and statistical data of the common organisation are governed by rules applicable to Czechoslovak organisations. Exceptions, if necessary, may be allowed by the Federal Ministry of Finance and the Federal Statistical Board.

II.4. Prescribed Contribution, Taxes and Duties Paid by the Common Organisation

II.4.1. Prescribed contribution (corporate tax) rate will be fifty (50) per cent on assessable earnings from activities of the organisation.

II.4.2. The rate of prescribed contributions to the Social Security Fund will be equal to the rate applicable to Czechoslovak economic organisations (presently the contribution amounts to twenty per cent the volume of the entire wages paid).

II.4.3. The common organisations will be assessable under the Sales Tax Act at the same conditions as other Czechoslovak economic organisations without a foreign participation, active in identical or similar fields of activity, who are holders of a foreign trade license.

II.4.4. Unless otherwise agreed in an International Treaty, dividends (distributed net profits) will be taxable under the income tax at twenty five (25) per cent.

II.4.5. Surtax charges may be imposed on the common organisation as result of its breach of pricing rules, failure to use safety devices protecting their labour, as well as failure of its technology to meet the respective safety of work rules and health rules.

II.4.6. Other duties to be paied will be the same as in case of Czechoslovak economic organisations.

II.5. Fixed Currency Conversion Rates

While converting Czechoslovak crowns to foreign currencies and vice versa when creating the common organisation and during its existence, fixed conversion rates applicable to payments of non commercial nature will be used for such payments plus a non commercial payments bonus and fixed conversion rates for commercial payments will be used for such commercial payments. The commercial and not commercial rates are fixed by the respective Czechoslovak authorities. Basically, rates valid at the time of the conversion will be applied.

II.6. Pricing

II.6.1. Wholesale prices of the final products of the common organisation will be determined on hand of the actual prices charged (and obtained) on markets of developed non socialist countries.

II.6.2. Monies earned from foreign trade will be included into the economic balance of the common organisation.

II.6.3. The common organisation will purchase goods from Czechoslovak organisations at agreed prices.

II.7. Foreign Trade License

A foreign trade license authorizing the common organisation to import goods for its own needs and to export its production for convertible currencies will be granted to the latter. Imports and exports for other currencies, if necessary, will be carried out through the respective foreign trade organisations authorized to engage in foreign trade, again at agreed prices.

II.8. Foreign Currency Rules

II.8.1. The common organisation

a) will be considered as a Czechoslovak resident company; but

b) will not be included into the foreign currency plan. Its needs in foreign currencies, if such needs arise, will be covered by means of credits (foreign currencies credits) taken from Czechoslovak foreign currency bank or from foreign company at conditions currently granted to foreign applicants for credits

c) will have the power to open an acocunt with the Czechoslovak foreign currency bank (either in free convertible currencies or Czechoslovak crowns or both) or with a foreign bank (in free convertible currencies).

II.8.2. Further particulars, govering the foreign currency relations applicable to the common organisations will be included into the Foreign Currency Permit granted by the bank to the latter, dealing inter alia with (but not limited to):

a) the exceptions from the duty to surrender foreign currency to the bank;

b) the right of free importation of goods for its own needs and free exportation f its products for free convertible currencies;

c) the right of tranfers to fore gn countries of

1. the share of the foreign participant in the assets (the statutory funds)of the common organisation in case of its winding up;
2. the share in profits (dividends) of the foreign participant;
3. a reasonable portion of earnings of the foreign workers (staff) employed with the co mon organisation (non Czechoslovak residents); and
4. contributions to social, security and health schemes abroad payable on behalf of foreign workers employed with the common organisation (the non-residents);

d) the right of the bank to control and check the adherance of the common organisation to the rules governing foreign currencies.

Transfers abroad will not be alowed, unless the common organisation fulfills and implements all its obligations towards the State budget and carries out all the prescribed contributions into the corporate funds or, in case of losses, unless the prescribed shares are paid in.

II.8.3. The common organisations will negotiate insurance of goods in import and export in the same way as Czechoslovak organisations authorized to engage in foreign trade.

II.9. Credits Taken by the Common Organisations with Czechoslovak Banking Institutions

II.9.1. Grant of credits will be governed by Czechoslovak rules. Deviations and exceptions, if any, will be allowed by the Czechoslovak State Bank.

II.9.2. Operation and investment credits will be granted upon separate application by the common organisation on the condition that same will be repayable and effectively used.

II.9.3. Interest rates applicable to credit and deposits will be fixed in accordance with the applicable governing rates of the bank.

II.9.4. When drawing on credits granted by the bank, the common organisation will allow the bank to carry out current checks and controls of their management and the material coverage of the credits.

II.10. Legal Aspect of Labour and Wages Relations and Retirement Schemes

II.10.1. Czechoslovak legal rules will be applied to persons employed with the common organisations.

II.10.2. Remunerations of persons employed with such common organisations will be equally governed by Czechoslovak legal rules. Deviations therefrom, if necessary, will be allowed by the Federal Ministry of Labour and Social Matters.

II.10.3. Social and Retirement Schemes applicable to the persons employed with the common organisations will be in accordance with Czechoslovak law. The common organisations will take steps in order to safeguard the interests of its foreign employee during their stay Czechoslovakia in their foreign security and retirement schemes.

II.11. Customs Duties

Customs duties assessed under the Czechoslovak rules in force for the time being will be collected on all imports for the common organisation. Upon application of the common organisation the Federal Ministry of Foreign Trade may, if it thinks it fit, exempt same from the obligation to pay customs duties, for a determined period of time.

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Source: B. KLEIN, JOINT VENTURES IN CZECHOSLOVAKIA (Prague: Czechoslovak Chamber of Commerce and Industry, 1987) at 13-18.

APPENDIX F

THE LAW
of July 6, 1982
on principles of conducting an economic activity in small industry by foreign corporate bodies and natural persons in the territory of the Polish People's Republic

Aiming at an increase of output of products and services for the domestic market and for export with participation of foreign corporate bodies and natural persons recruited primarily from foreign Polonia, it is ruled as follows:

CHAPTER 1

General Provisions

Article 1

1. Corporate bodies domiciled abroad, foreign citizens, Polish citizens with a permanent stay permit abroad and companies set up and contributed to exclusively by these persons and having their head office in Poland, hereinafter called „foreign economic units", may undertake an economic activity in the territory of the Polish People's Republic, hereinafter called „economic activity".

2. Foreign economic units may conduct an economic activity on their own behalf and account and also may become partners in a company with participation of Polish economic units.

Article 2

On the grounds of regulations contained in the present Law, the economic activity in the sphere of small industry may consist in:

1) production of commodities or granting of services,
2) trade,
3) export of own products or sevices or import for own use in production or service activity.

Article 3

1. The economic cooperation with foreign economic units conducting an economic activity in small industry is coordinated by the Government Plenipotentiary for Foreign Small Industry Enterprises, hereinafter called "the Plenipotentiary".
2. The Plenipotentiary is nominated and recalled by Prime Minister.

Article 4

1. Among the responsibilities of the Plenipotentiary, there are in particular:

1) inspiring and organising activities – aimed at developing economic cooperation with foreign economic units, and primarily with Polonian units,
2) initiation of creation of conditions favourable for formation of enterprises in the territory of the Polish People's Republic,
3) determination of preferred directions of development of production of goods and services.

2. The Prime Minister determines the detailed scope of activities of the Plenipotentiary.

Article 5

1. The Polish-Polonian Chamber of Industry and Commerce shall be created.
2. Foreign economic units conducting activity as defined hereby, associate in the Polish-Polonian Chamber of Industry and Commerce, referred to as "The Chamber".
3. The Minister of Home Trade and Services supervises the Chamber and approves its statute.
4. The territory of the Chamber's activity is the Polish People's Republic.
5. The Chamber is obliged to:

1) represent economic interests of its members and to act for the protection of these interests,
2) assist its members in solving economic, organisational and legal problems in connection with their undertaking and conducting of economic activity
3) cooperate with the state administration bodies with a view toassure undertaking and conducting of such economic activity by the members as conforming with the interest of the national economy and the legal code.

6. Detailed tasks and operating principles of the Chamber, its bodies, the mode of their creation and activity, and the principles of its financial economy, are defined in the Chamber's statute.

7. The Chamber becomes a corporate body as soon as its statute has been approved.

8. Should a body of the Chamber substantially infringe upon the law or the provisions of its statute, the body supervising the Chamber's activity can name time allowing to mend such faults or change the composition of the Chamber's body. Should the time expire to no effect, the supervisory body can suspend the given body of the Chamber until a newbody is composed to replace the former according to the procedure determined in the statute

Article 6

Whenever the Law mentions:

1) Polish economic units, it means:
   a) small state industrial enterprises,
   b) social organizations entitled to conduct an economic activity on the grounds of other regulations,
   c) cooperatives,
   d) unions of producers and domestic enterprises active in small industry,
   e) persons entitled to conduct handicraft or other economic activity on the grounds of other regulations,
   f) private persons undertaking economic activity jointly with foreign economic units,
2) foreign enterprises, it means an enterprise active in the territory of the Polish People's Republic on the grounds of the present Law and belonging solely to a foreign economic unit, and also enterprises arranged as companies of which foreign economic units are sole shareholders

3) companies with a foreign share, it means an enterprise in the form of a joint stock company with shares held by foreign and Polish economic units,
4) enterprise, it means a foreign enterprise or an enterprise with a foreign share,
5) an owner of an enterprise, it means also persons whose rights to the enterprise result from reasons other than ownership.

Article 7

1. A Polish citizen permanently domiciled in Poland may contribute his share in an enterprise with a foreign share with his own fixed assets, liquid assets or patents and licences.
2. A Polish citizen permanently domiciled in Poland may obtain, on the grounds of financial regulations, a permit to make his contribution in a enterprise with a foreign share in his own foreign currency means. The contribution and the profit resulting from it can be utilised according to financial regulations.

CHAPTER 2
Issuing of Permits

Article 8

1. The conducting of an economic activity described under Article 2 above requires a permit.
2. The bodies authorised to issue permits mentioned under item 1 above, with the exception for the provisions of item 6 below, are the respective provincial state administration bodies on whose territory the enterprise will be or has been established.
3. A provincial state administration body mentioned under item 2 above, may refuse to issue permit when such economic activity contradicts:
1) an important social interest or that of the national economy,
2) state security and protection of state secrets.
4. A refusal to issue permits under the provision of item 3 above, requires neither justification nor explanation in detail.
5. The Council of Ministers determines detailed conditions of the granting of the permits.
6. Permits for economic activity mentioned in Article 2 item 3 above, are issued by the Minister of Foreign Trade.

Article 9

1. A foreign economic unit intending to commence an economic activity in the territory of the Polish People's Republic is obliged to nominate a plenipotentiary to represent it before the Polish administrative authorities and in legal relations with Polish economic units. Any Polish citizen or an authorised corporate body permanently domiciled in Poland may become a plenipotentiary.
2. The nomination of a plenipotentiary is not required when the foreign economic unit is permanently domiciled in the territory of the Polish People's Republic or when the foreign economic unit being a corporate body has a representative office in the territory of the Polish People's Republic.
3. The nomination of a plenipotentiary, mentioned under item 1, should be approved by the respective administrative authority. The authority may refuse to acceptan appointment of a given person as a plenipotentiary if it contradicts the security of the state the protection of state secrets and when, with his hitherto conduct, the person provides no sufficient guarantee to perform this function.

Article 10

An application for a permit should contain:
1) an information about the kind, form and scope of the proposed economic activity of a unit or units applying for the permit to undertake an economic activity,
2) an indication of the proposed seat of the enterprise and the scope of its economic activity,
3) envisaged scale of the economic activity and the expected employment,
4) envisaged forms of financing and outlays necessary for commencing the economic activity,
5) the declared value of the foreign currency input and contribution in kind calculated in foreign currency and designated for commencing the economic activity, and in case of an enterprise with a foreign share, also the contribution of the Polish economic units,
6) in case of a company – articles of partnership,
7) a copy of the power of attorney in case when the applicant employs a plenipotentiary or a copy of an act of establishment of a representative office.

Article 11

An application for an establishment of an enterprise with a foreign share is submitted jointly by the partners.

Article 12

1. The investment contribution of the foreign economic unit may be composed of fixed capital assets and materials necessary for one year of the economic activity purchased for convertible currencies or for zlotys obtained through a documented exchange operation.

2. Patents, licences and similar property also constitute an investment input.

3. The minimum investment contribution mentioned under item 1 and 2 can not be lower than the minimum founding deposit, as mentioned in Article 16, item 4.

Article 13

The application discussed in the Article 10 above is considered within three months from the day of filing. In case the application is incomplete the considering authority immediately requests the applicant to complete the application. The three months period runs from the day of submission of a complete application.

Article 14

1. A permit for conducting an economic activity determines in particular:
1) the subject matter and the place of the economic activity of the enterprise and its legal form,
2) the seat of the enterprise,
3) the time of validity of the permit,
4) the admissible size of employment.

Article 15

In cases substantiated by economic or social reasons, the permit issuing authority may require that the share of Polish economic units in an enterprise with a foreign share exceeded 50 per cent.

Article 16

1. The permit is issued after presentation of a certificate testyfying about a payment of founder's deposit by the foreign economic unit at a Polish bank.
2. The founder's deposit constitutes a security against legal claims of Polish economic units in case the foreign economic unit does not fulfill its obligations.
3. The founder's deposit remains in the bank until the date of commencement of the economic activity indicated in the permit. The deposit bears interest equal to interest born by any bank deposit by foreigners.
4. The deposit is paid in foreign currency in the amount equal to at least 6.9 million zlotys. In case the rate of exchange alters, these sums alter respectively.
5. The Minister of Finance in consultation with the President of the Narodowy Bank Polski and the Plenipotentiary will issue regulations determining in detail the principles and the form of setting the amount of the founder's deposit, or of a partial or complete exemption from the obligation of paving the founder's deposit.
6. The amount of the founder's deposit to be paid by individual enterprises is determined by the permit issuing authority in consultation with the bank.

Article 17

The permit is issued for a period of up to twenty years, and in cases when depreciation period is long – for forty years. A new permit may be issued after expiration of the previous permit.

Article 18

The permit may be revoked only when the activity of the enterprise is contrary to legal regulations in force or conditions determined in the permit.

Article 19

Decisions concerning permits for conducting of economic activity, regulated by the present Law may be appealed from to the administrative court according to principles determined in the Code of Administrative Procedures except for decisions refusing permit grants for the reasons of state security or state secrets.

Article 20

1. Enterprises conducting their activities on the grounds of the present Law, with the exception of companies that were registered in the Commercial Register by virtue of other regulations, are registered in the Register of Foreign Enterprises.

2. The Register of Foreign Enterprises is accessible to legally interested persons.

3. Entries in the Register are made by courts of law. Their competences, according to regulations concerning organization of courts and principles or running the Register of Foreign Enterprises the data to be entered in the Register, requirements concerning applications for the entry, the procedures of making the entries, changes in the entries and delations from the Register, principles of access to the Register, principles of issuing copies or excerpts from the Register, as well as the circumstances when they can be issued are determined by the Minister of Justice.

CHAPTER 3
General Principles of Activity of Enterprises

Article 21
Foreign and Polish economic units enjoy feedom of choice of their legal form, principles of partners participation, organizational forms and principles of management of the enterprise within the framework of regulations in force in Poland. Regulations concerning enterprises organised in the form of a company are contained in the Civil or Commercial Codes, depending on the character of the company.

Article 22
1. Enterprises utilise labour resources according to the principles laid by the Council of Ministers.
2. Regulation of the Polish Labour Code apply to labour relations in enterprises.
3. Enterprises create their social and housing funds according to principles applicable to state small industry enterprises.

Article 23
Foreigners temporarily staying in Poland and employed by enterprises may receive a half of their wages in foreign currency originating from foreign currency funds of the enterprise designated for transfer abroad. Means obtained by foreigners according to these principles can be transferred abroad.

Article 24
1. A commencement of an investment activity or any other activity not covered by the permit requires a new permit.
2. Opening of a new plant or a subsidiary not in the seat of the enterprise or not in the localities indicated in the permit requires an extension of the permit.
3. In cases when the new plant or subsidiary discussed under item 2 above are to be localised in the territory subjected to an authority other than the one that issued the permit, the extension of the permit requires an agreement of the authority competent for the new location of the proposed plant or subsidiary.
4. Development or modernization investments, opening of a new plant or undertaking a new activity do not require an additional permit when they are not contrary to conditions set out in the already issued permit.

Article 25
Enterprises may conclude cooperation agreements with Polish economic units.

Article 26
1. Enterprises may sell goods and services imported by them through state enterprises entitled to conduct sales for foreign currencies in the territory of the Polish People's Republic.
2. The Minister of Finance in Consultation with the Minister of Foreign Trade and the Minister of Home Trade and Services will issue regulations determining cases, principles and conditions of such sales discussed under item 1 above.

Article 27
The enterprise has the right to retain 50 per cent of its export incomes, the remaining 50 per cent are to be sold to the Polish foreign currency bank.

CHAPTER 4
Credits for Enterprises

Article 28
Enterprises may obtain operating and investment credits from Polish banks according to principles determined by the Council of Ministers. Credits are granted on the grounds of an agreement

Article 29
1. Enterprises can obtain credits from foreign banks providing that currency and banking regulations are followed
2. The utilization of credits mentioned under item 1 above by an enterprise where a Polish economic unit is a shareholder, which means that the Polish economic unit will be burdened with the respective credit obligations, requires an additional acceptance by the Minister of Finance.

CHAPTER 5
Utilization of Profit

Article 30
1. Foreign economic units may annually transfer abroad a part of income mounting to:
1) 10 per cent of the investment outlay in foreign currency,

2) 50 per cent of export income surplus in foreign currency, left at the disposal of the enterprise, according to the provisions of Article 27, over import expenditures

and the joint transfer value cannot exceed 50 per cent of net income achieved in the previous financial year.

2. The Minister of Finance determines the detailed principles of evaluating the investment outlays mentioned under Article 12 above and calculating the sums mentioned under items 1 and 2 above. The value of investment outlay may be determined by court experts.

3. The Minister of Finance in consultation with the Plenipotentiary may determine circumstances in which the foreign economic unit may transfer abroad the amount higher than the 50 per cent of the income after taxes achieved during the financial year. This privilege may result from a special character of the enterprise's activity or a low rate of profit applied in calculation of prices of goods and services sold by the enterprise or social reasons.

Article 31

The owner of the enterprise may transfer abroad the sum achieved from the sale of the enterprise or of a part of the enterprise less tax providing that:

1) the sale contract was made after obtaining a currency permit and confirmed by a notary,
2) the buyer posesses a permit for running an enterprise of this kind,
3) the amount achieved from the sale was paid in convertible currency to a Polish bank,
4) the seller paid his taxes.

Article 32

The Minister of Home Trade and Services in consultation with the Minister of Finance and the Minister of Foreign Trade may determine conditions for purchasing goods and services for Polish zlotys originating from the amount of income after taxes by a foreign economic unit and designating them for export.

Article 33

Foreign units achieving income resulting from their right to the enterprise by the right of marriage, as well as ascendants and descendants of the owner are entitled to purchase all personal goods an services for Polish zlotys originating from their participation in profits achieved by the enterprise during their stay in Poland.

Article 34

Separate regulations determine principles of utilization of income resulting from the activity of the enterprise and earned by Polish economic units.

CHAPTER 6
Lease of Immovable Property

Article 35

1. Enterprises may lease state property.
2. The lease of state property to enterprises is made according to principles determined by separate regulations.

Article 36

1. The foreign owner of an enterprise may obtain a permit for a lease of immovable property for his own use according to principles binding for Polish citizens. Expenditures involved may be financed from the income achieved in the course of the economic activity conducted in Poland.
2. The Minister of Administration and Spatial Economy in consultation with ministers concerned determines detailed principles and conditions of issuing permits mentioned under item 1 above.

CHAPTER 7
Special, Transitory and Final Provisions

Article 37

Problems related to dissolution and liquidation of an enterprise with foreign participation are determined in the articles of partnership of the company with respect to regulations contained in Civil and Commercial Codes.

Article 38

In case an enterprise with a foreign share is being liquidated, the Polish economic units being partners to the company enjoy a preemption to rights and assets of the enterprise remaining after settlement with the creditors of the enterprise. ■

Source: Dziennik Ustaw (Journal of Laws) No. 13 (5 April 1985) in (1985) Inter-Polcom (Polish Information Magazine) No. 4/39 at 15.

The above uniform text of the Law was published in „Dziennik Ustaw" No 13 of April 5, 1985 on the grounds of an anouncement of the Minister of Home Trade and Services of March 18, 1985 also published in the same issue.

APPENDIX G

Published in Journal of Laws
No. 17 item 88

THE LAW

on companies with foreign capital participation

CHAPTER 1

General provisions

Article 1

This law sets out the conditions for establishing and the principles governing the activities of companies with foreign capital participation on the territory of the Polish People's Republic.

Article 2

1. Companies with foreign capital participation, hereinafter referred to as "companies", are - under this law - the limited liability or stock companies formed by Polish legal persons and foreign parties.
2. The companies may be established with the aim of conducting economic activities consisting of the manufacture of goods and of rendering services and their sale at home and abroad.
3. Provisions of the Commercial Code are applicable unless otherwise stated in this law.

Article 3

1. Polish legal persons entitled to participate in companies are:
   1/ state enterprises;
   2/ cooperatives and their unions;
   3/ scientific institutions and research and development units provided they have the status of a legal person;

4/ commercial companies, in which the Treasury or persons mentioned under 1/-3/ own more than 50% of the initial capital.

2. Foreign parties entitled to participate in companies are:
   1/ legal persons having registered office abroad;
   2/ natural persons of foreign citizenship or Polish citizenship with foreign domicile;
   3/ companies without the status of a legal person established by persons mentioned under 1/ and 2/.

Article 4

Persons establishing a company may freely arrange their mutual relations and internal company relations in contracts or other founding documents of the company, unless provisions of the Commercial Code or this Law state otherwise.

Article 5

1. The establishment of a company and, in the case a company already exists, the transfer of share or stock between partners or the accession of a new person to the company, requires a permit.

2. A permit is granted at the request of Polish partners by the Minister of Foreign Trade acting in agreement with the Minister of Finance and other authorities competent by virtue of separate legal provisions.

3. A permit authorising the establishment of a company is granted when the economic activity of a company is expected to assure in particular:
   1/ the introduction of modern technology and management in the national economy;
   2/ the supply of goods and services for export;
   3/ the improvement of supply to the domestic market of modern goods and services of high quality.

Article 6

1. The Minister of Foreign Trade may deny granting a permit if the economic activity would not be advisable based on:
   1/ a major social or national economy interest;
   2/ state security or protection of state secrets.
2. The refusal to grant a permit may not be contested before an administrative court.

Article 7

1. A permit will not be granted for the establishment of a company with an aim of conducting economic activity in the field of defence, rail transport, air transport, communications, insurance, publishing /excluding the printing industry/, and foreign trade agency.
2. In particularly justifiable cases the Minister of Foreign Trade may, however, acting in agreement with the Minister concerned, grant a permit for the establishment of a company in the field specified in par 1.

Article 8

1. The equity participation of Polish partners in company's capital shall be at least 51%.
2. In economically justified cases the Minister of Foreign Trade may, acting in agreement with the Minister concerned, depart from the rule as determined in par. 1, provided that state security considerations do not constitute an obstacle.

CHAPTER 2

Establishment of Companies

Article 9

1. The request to grant a permit for the establishment of a company should contain:
   1/ the purpose of the company's formation;

2/ the object and scope of the company's economic activity, including exports and imports;
3/ the expected duration of the company's activities;
4/ the projected number of employees;
5/ means indispensable to start company's activities, including the value of the initial capital;
6/ the seat of the company and location of its plants;
7/ proportions in which Polish and foreign partners will contribute to the company's capital and forms of contribution;
8/ the proposed scope of the right to conduct foreign trade, if the company intends to request such a right.

2. The request mentioned above in par. 1 should be accompanied by:

1/ a draft contract or other founding documents of the company, required by the provisions of the Commercial Code;
2/ documents showing legal status and financial standing of prospective partners;
3/ the consent of the founding organ of the competent co-operative Union or of the body supervising the Polish legal person, if such body exists.

3. Documents mentioned in par. 2 are submitted in Polish or together with a certified translation into Polish.

4. The decision concerning the granting of a permit is issued within three months from the day the request has been submitted.

Article 10

1. The permit to establish the company states:

1/ the partners, name and seat of the company, location of its plants as well as the object and duration of company activities;
2/ proportions in which Polish and foreign partners will contribute to the company's capital and forms of contribution;

3/ the conditions upon which the company will be authorized to conduct foreign trade, if request envisaged in article 9 par. 1 item 8 was filed;
4/ the rate of resale of foreign currency envisaged in article 21 par. 2;
5/ other conditions which the company shall fulfill in the course of its activities;
6/ its period of validity.

2. Any changes in the contract or other founding documents of the company require a separate permit to be granted by the Minister of Foreign Trade acting in agreement with the Minister of Finance.

3. The granting of a permit mentioned in par. 1 is tantamount to an approval to undertake the activity therein determined, subject to provisions of article 11.

Article 11

If, according to separate legal provisions, the undertaking of economic activity specified in the permit requires a separate permit, the company is required to obtain such permit before commencing activity.

Article 12

1. The company is subject to registration in a court of register according to rules applicable to the commercial register.

2. The application to register the company should be accompanied by the permit to establish the company.

Article 13

Within two weeks from the date of its registration the management of the company notifies the Minister of Foreign Trade, indicating the court in which the company has been registered.

Article 14

1. If the company conducts an activity contrary to the law or to the terms laid down in the permit authorising its estab-

lishment the organ which granted the permit summons the company to abandon the said activity in a specified period. Non-compliance will result in the withdrawal of the permit and, if further existence of the company is without purpose, in an application to the court for the dissolution of the company.

2. The dissolution of the company is pronounced by a court order.

Article 15

1. Contributions to company's capital may be made both in cash or in kind.

2. Contributions by foreign partners may be made:
   1/ in cash - in foreign currency or in zlotys obtained from a documented exchange of that foreign currency;
   2/ in kind - under the condition that the contribution was transferred from abroad or acquired in zlotys obtained from a documented exchange of foreign currency.

3. Contributions in kind by Polish partners may consist of fixed assets at their disposal as well as other property and rights. State real property may be leased to the company upon the approval of a proper local administrative authority.

4. The value and nature of contributions in kind are specified in contract or other founding documents of the company and at the request of the body granting the permit may be submitted to verification by independent experts, at the cost of the contributor.

5. Share and stock certificates may be issued only in the form of registered documents.

CHAPTER 3

Company's management

Article 16

The appointing procedures, the composition and the scope of authority of company's organs are determined by partners in

contract or other founding documents of the company, save as provided in article 1.

Article 17

The company's manager, and in case of a board of management its president, should be a Polish citizen permanent resident of Poland.

Article 18

1. A supervisory council is appointed.
2. The company's employees elect one member of the council by a simple majority vote. The elected person may be the company's employee.

CHAPTER 4

Company's finances

Article 19

1. For the purposes of determining profit, the operating costs of the company include depreciation of fixed assets and nonmaterial values, computed in accordance with depreciation rates and principles provided for state enterprises.
2. The depreciation amounts remain in the company.
3. The company's profit, after deduction of the income tax dues, constitutes profit for distribution.
4. In order to cover balance losses 10% of the profit for distribution is transferred to a reserve fund. A company may cease to make such deductions if its reserve fund attains in an accounting year 4% of company's operating costs.
5. The profit is distributed to partners in proportion to their holdings in the company's capital. Any arrangement departing from that principle has to be approved by the Minister of Finance.

Article 20

1. The Minister of Finance sets out general principles of keeping the company's accounts.

2. The annual balance-sheet of the company is audited by the appropriate organ of the Minister of Finance within three months from the date of deposit. The Minister of Finance may authorise also another body to audit the annual balance--sheets of certain companies.

3. The legal provisions governing the auditing of annual balance-sheet of state enterprises and other state organisational units are applied mutatis mutandis to the audits of company's balance-sheet, but the company's annual report is subject to a complete scrutiny before being officially anounced as audited.

4. The audited profit shown in the company's annual report, drawn up in accordance with the accounting principles in force, constitutes the basis for ascertaining that part of the profit which the foreign partner may, under the provisions of the Law, transfer abroad.

Article 21

1. The company resells to the Polish foreign-exchange bank from 15 to 25% - of its foreign currency export proceeds.

2. The Minister of Foreign Trade, acting in agreement with the Minister of Finance, determines the rate of resale individually for each company formed in its permit article 5/. In economically justified cases the rate of resale may be fixed below 15% of the foreign currency proceeds.

3. After the resale, provided for in par. 1-2, the remaining part of foreign currency proceeds is left at the disposal of the company.

Article 22

1. The foreign currency profit, resulting from the excess of export earnings over import outlays in the previous accounting year, remaining after the resale provided for in article 21 par. 1-2 is distributed to the partners in the same proportion in which the partners participate in the distribution of company's profit.

2. The foreign partner has the right to transfer abroad the amount mentioned in par. 1 without a separate foreign exchange permit.

3. The Polish partner has the right, without a separate foreign exchange permit, to dispose of the amount mentioned in par.1:

   1/ if he carries out his own exports - up to the amount of foreign currency retention quota;

   2/ in other cases - up to the amount fixed by the Minister of Foreign Trade, respecting provisions on the foreign currency retention system.

   The remaining part of the aforementioned amount is resold by the Polish partner to the Polish foreign-exchange bank.

4. The company distributes profit mentioned in par. 1 in the currencies of proceeds.

Article 23

1. Subject to the provisions of article 5 and article 8, foreign partners have the right to invest their profit and increase the company's initial capital.

2. The foreign partners have the right to transfer abroad foreign currency obtained from sale of their shares or stock, as well as that part of company's assets which is distributed to them in case of the company's liquidation.

Article 24

1. The company's cash resources are deposited in accounts with Polish foreign exchange banks.

2. On the instruction of the company, the banks mentioned in par. 1 open and maintain the company's accounts in Polish and foreign currencies. Credits are extended to the company in accordance with the rules set for state enterprises and on the basis of contracts concluded between the company and the bank.

3. The company, after obtaining consent of the bank or the banks with which it has accounts and after obtaining a for-

eign exchange permit, may open and maintain its accounts with foreign banks.

4. The company may also, after obtaining a foreign exchange permit and consent from the bank of the banks with which it has its accounts, raise foreign credits. The company may also raise commercial credits in accordance with the rules set for state enterprises.

5. Banks mentioned in par. 1 may guarantee the company's obligations in accordance with legal provisions in force.

6. The National Bank of Poland /Narodowy Bank Polski/ may guarantee to the foreign party the return of assets brought in on account of contributions before the company's registration in case of losses resulting from decisions of state organs affecting the company's assets.

Article 25

In particularly justifiable cases the company may obtain a foreign exchange permit to effectuate foreign currency purchases on the domestic market.

Article 26

1. Companies participate in commercial activities in accordance with the principles established for units of socialized economy.

2. The Minister of Foreign Trade acting in agreement with other ministers concerned may, in justifiable cases, determine in the permit different principles and modes of material and technical procurement and of distribution of goods manufactured and services rendered by the company.

Article 27

State enterprises may sell fixed assets to companies and establish in their name limited property rights on those assets.

Article 28

State real property may be made available to the companies for the period of their activity on the basis of a perpetual lease

or leased in accordance with the rules governing the administration of State lands.

CHAPTER 5

Taxes and levies

Article 29

The company pays taxes and levies as well as enjoys tax allowances and exemptions in accordance with provisions on taxation of units of socialized economy, taking into account changes resulting from the present Law.

Article 30

1. The basis for assessing company's income tax consists of audited profit earned during the fiscal year increased by costs and losses considered to be unjustified.
2. The company's income tax rate is 50% of the taxable basis. The tax rate is decreased by 0.40% for each 1%, of the value of production or services exported by the company.
3. The company is exempt from income tax during the first two years of its activity.
4. The company is exempt from income tax on that part of the profit which is reinvested.

Article 31

1. Exempt from import duties are:
   1/ property constituting the foreign partner's contribution in kind to the company's capital, as specified in contract or other founding documents of the company in the form of machinery, installations and equipment as well as means of transport used to conduct company's activities determined in the permit.
   2/ machinery, installations and equipment as well as means of transport used to conduct company's activities determined in the permit acquired during the first three years.

2. When exporting the company is entitled to reimbursement of import duties in accordance with the principles laid down for state enterprises.

3. In economically justified cases the Minister of Foreign Trade may grant further allowances and exemptions from customs duties.

CHAPTER 6

Employment

Article 32

1. The company's employment and labour relations are governed by Polish law.

2. Polish law is applied to social services and social insurance of the employees as well as trade union activities.

3. The company may employ foreign citizens if this is justified by their special qualifications and upon receiving consent of the local administrative authority of special competence at the voivodship level.

Article 33

1. The company's salary system is determined in contract or other founding documents of the company or in the resolutions of its organs.

2. Salaries of company employees are fixed and payed in zlotys.

3. Employees mentioned in article 32 par. 3 may receive up to 50% of their salaries in foreign currency out of the company's foreign currency funds /article 21 par. 3/. At the request of the employee this part of the salary may be transfered abroad without a separate foreign exchange permit.

CHAPTER 7

Transfer of rights resulting from participation in the company

Article 34

1. Each partner may dispose of his shares or stock in the

company only with the consent of the other partners. Such consent shall be expressed in writing.

2. The partner to whom the consent to dispose of his shares or stock was denied may request the other partners to name another buyer within three months. In the absence of agreement concerning the price, date of payment or other conditions of the purchase, these will be determined by the court on application by the interested party after consultation with experts.

3. If the buyer has not been named or the buyer fails to pay the price within the time-limit set by the court, or if the permit mentioned in article 5 is denied the company is dissolved.

Article 35

1. The successors of a partner who was a natural person may become partners upon receiving consent of the other partners and a permit referred to in article 5. The same applies to the legal successor of a legal person.

2. In the absence of an agreement respective provisions of article 34 par. 2 and 3 are applied.

Article 36

1. If the sale of shares or stock is to take place by way of execution the company may, within one month after receiving notice ordering the sale, indicate a person who will buy the shares or stock at the price determined on application by the court after consultation with experts.

2. In the absence of a request to determine the price or if the price has not been paid to the court executive officer by the person named by the company within one month after the company has been notified that a price has been determined, the shares or stock shall be sold according to procedures referred to in provisions on execution.

Article 37

In the event of liquidation of the company Polish partners enjoy the right of pre-emption of property and rights constituting the company's assets, unless contract or other founding documents of the company provide otherwise.

CHAPTER 8

Settlement of disputes

Article 38

1. Disputes to which the company is a party are settled by a court.

2. Disputes as in par. 1 may be submitted to a court of conciliation in accordance with provisions in force.

CHAPTER 9

Final provisions

Article 39

In article 24 par. 1 item 4 of the law on the self-management of employees of state enterprise of September 25, 1982 /Journal of Laws No. 24 item 123/, the words "as well as companies" are added.

Article 40

The activities of the companies are supervised by the Minister of Foreign Trade.

Article 41

1. This Law does not apply to companies whose establishment and activites are governed by provision, of the following laws:

   1/ The Law of 6 July 1982 on the principles of conducting economic activities in the field of small scale industries by foreign legal and natural persons on the territory of the Polish People's Republic /Journal of Laws 1985 No. 13 item 58/.

2/ The Law of February 26 1982 - Banking Law /Journal of Laws No. 7 item 56 and Journal of Laws 1983 No. 71 item 318/.

2. This Law does not apply, save as provided in article 42, to international corporations unless international agreements provide otherwise.

Article 42

1. If an international agreement mentioned in art. 41 par. 2 provides that an international corporation or its branch having its seat on the territory of the Polish People's Republic possesses the status of a legal person such corporation or its branch obtains the status of a legal person as soon as it is entered into the commercial register.

2. Entry into the commercial register follows a request of a competent organ of the international corporation or of its branch. A certified copy of the Polish text, or a certified translation into Polish of the agreement on the establishment of an international corporation mentioned in art. 41 par. 2 or of its branch, is the basis for registration. The agreement should be accompanied by a list containing the names of members of the board of directors and plenipotentiaries of the corporation or its branch

3. Provisions on the commercial register correlating to limited liability companies, save as provided in the international agreement, are applied to the registration of international corporations or their branches.

Article 43

The Law enters into force on the 1st July 1986.

Source: A. Burzynski, A Foreign Investor's Guide to the Law of 23rd April 1986 (Warsaw: Information and Legal Aid Centre, Polish Chamber of Foreign Trade, 1986) at 13.

APPENDIX H

DETAILS OF JOINT VENTURES IN THE SOVIET UNION

Through the end of March 1988, 36 joint ventures with foreign partners had been registered in the USSR. This listing gives the details as recorded by USSR trade officials

Registration No. Date	Name of joint venture	Soviet partner and its share in capital	Foreign partner and capital share	Foundation capital	Sphere of activity
1 12-05-87	Littara-Volanpak	"Littara" Trust (51%)	Volan Pack (Hungary 49%)	T R 800,000	Packaging materials & packing finished products
2. 22-06-87	Est-Finn	"V Klementi" Sewing Trust (51%)	Kati-Munti (Finland 49%)	2 0 mn R	Light industry products
3 23-06-87	Igirma-Tairiku	"Irkutsklesprom" Forest Industry (51%)	Tairiku-Trading (Japan 49%)	2 0 mn R	Production of sawn timber materials
4 23-06-87	Kompaniya Moskva-Ashok	Mosgorispolkom (60%) Railway Restaurant Trust	Indian Tourist Development Corporation (40%)	0 3 mn R	Dehli Indian restaurant in Moscow
5 29-06-87	EKE-Sadolin	Republic Trust "Estkolhozstroy" (60%)	Sadolin OY (Finland 40%)	1.05 mn R	Production of wood preserving & staining coatings
6 16-07-87	Khomatek	"Ordzhonokidze" Machine Tool Plant (68%)	Heinemann Maschinen und Anlagenbau (W Germany 32%)	47 669 mn R	Production of lathes, work centers & flexible production modules
7 16 07 87	Petrokam	"Nizhnekamskneftekhim" Production Trust (54 5%)	Mineralol Rohstoff Handel (W Germany 45 5%)	9 42 mn R	Ethylene glycol production
8 18-09-87	Liyan	Odessa "January Uprising" Heavy Crane Production Trust (60%)	Liebherr International (Switzerland 40%)	2 0 mn R	Production of self-propelled cranes
9 02-10-87	Infa-otel	Inturist (51%)	Finnair (Finland 49%)	10 2 mn R	Hotel for foreign tourists
10 15-10-87	Lenvest	2nd Lenmgrad Shoe Factory "Proletarskaya Pobeda" (60%)	Salamander Import-Export GmbH (W Germany 40%)	3 5 mn R	Shoe production & sale
11 29 10-87	Sovplastital	Production Trust "Usbytplastik" (78%)	Alma Rose (Italy 22%)	23 561 mn R	Plastic consumer goods & souvenirs
12 19-11-87	Yatig-Inzhiniring	Yaroslavskiy Zavod Topliunoy Apparatury (51%)	LIM A G (Liechtenstein 49%)	0 9 mn R	Construction & technological projects in machine building & metal working
13 26-11-87	PRIS	Production Trust Neftekhimavtomatika (51%)	Combustion Engineering Inc (US 49%)	3 15 mn R & $ 8 mn	Process control planning & production in the petro-chemical & chemical industries
14 27-11-87	Konsofin	Giprobum (51%)	Jaakko Povry OY (Finland 49%)	0 5 mn R	Construction planning services
15 04-12-87	Technikord	State Research Institute for Mining and Chemical Raw Materials (78 625%)	Societe Nouvelle de Metallization Industrie (France 21 375%)	4,088,799 R	Cord materials for gas thermal spraying
16 09-12-87	Interkvadro	Moscow Aviation Institute (40%), All Union Centre for the Study of Agricultural Resources (35%)	Anitaliotheque (France 20%), Delta Trading (Italy 5%)	0 8 mn R	Complexes for data processing, export of software
17 11-12-87	Sovventtekstil	Moscow Production Enterprise for Non-Fabric materials (67%)	Temaforg Hungary (33%)	T.R 7 2 mn	Processing of textile waste
18 15 12-87	Sofraplast	Soyuzglavtoresursiy (42 7%), Polymer (27 3%)	Compagnie Olivier (France 30%)	1 1 mn R	Polythene bags & flowerpots from polymer waste

Listing concluded in next week's BEE

Source: Business Eastern Europe (25 April 1988) 131, and (2 May 1988) 141.

DETAILS OF JOINT VENTURES IN THE SOVIET UNION

This week's BEE *concludes the list of joint ventures began last week on page 131*

Registration No. Date	Name of joint venture	Soviet partner and its share in capital	Foreign partner and capital share	Foundation capital	Sphere of activity
19 24-12-87	Neptune	Sovribflot (5%), Promorribprom (23%), Sakhalinrybprom (23%)	Skaros AG (Sweden 49%)	15 mn R	Maritime installations, leasing of vessels, ship-building, deep-freezing installations
20. 28-12-87	Dinamika	V/O Vneshtorgizdat (70%)	Gerald Computers (UK 30%)	103,040 R	Computer systems for teaching & word processing
21 29-12-87	Dialogue	Kamaz (32 6%), MGU (13.0%), IKI (7 2%), TSEMI (13 0%), GDIVTs VDNKh (2 6%), Vneshtekhnika (9 8%)	Management partnerships International Inc (US 21 8%)	15 35 mn R	Assembly of PCs, marketing of services
22. 30-12-87	Interfakel	Experimental laboratory "Fakel" (51%), Gosagroprom	MTs (Austria 49%)	258,000 R	Equipment & material for servicing machine components
23 31-12-87	Tissa	V/O Soyuztorgreklama (67 1%)	Enterprise "Mahir" (Hungary 32 9%)	1 52 mn R	Means of advertising & advertising services
24 14-01-88	Tavria	"Soyuzanilprom" Trust (51%)	Sandoz AG (Switzerland 49%)	7 5 mn R	Dye stuffs & other chemical products
25. 15-01-88	Enkha	Production Enterprise Neftekhimavtomatika (51%)	"Merni Sistemi" Energoinvest (Yugoslavia 49%)	5 971 mn R	Production, installation & repair of turbines
26. 22-01-88	MSZ Wendt	Moscow Machine Tool Building Factory (64%)	Wendt GmbH (W Germany 36%)	2,890,000 R	Machine tools for making reinforced plates
27. 26-01-88	Petrovoith	Petrozavodskbummash V/O Khimmashekspor, V/O Soyuzorgbumprom, (51%)	J M Voith AG (Austria 49%)	500,000 R	Planning production lines & equipment for the paper industry
28 26-01-88	"Joint Venture Burda-Moden"	V/O Vneshtorgizdat (51%)	Anne Burda GmbH & Co (W Germany 25%), Ferrostahl AG (W Germany 24%)	10 mn Dm	Production & sale of printed products
29 27-01-88	Sovitalprodmash	Volzhskprodmash (73 344%)	FATA European Group SpA (Italy 26 656%)	19 4 mn R	Commercial refrigeration equipment
30 09-03-88	Fazis S P	Potapyskiy Territorial Inter-Branch Trust (62 2%)	W Post GmbH (W Germany 37 8%)	3,056,600 R	Production & sale of frame furniture, medical accessories etc
31 10-03-88	Raduga sport	Sovintersport (51%)	Raduga (Japan 49%)	4 0 mn R	Sport & health centers
32 11-03-88	Tirpa	Moldavian Prod Trust "Tochlitmash" (73 3%)	Main Group SpA (Italy 26 7%)	12 mn R	Production of press forms for shoes
33 14-03-88	Borisforg	Borisovskiy Combine for Processing Secondary Raw Materials (55%)	Temaforg (Hungary 45%)	T R 6.26 mn	Making hand towels from chemical & textile waste
34. 21-03-88	Esttek	Production Trust Estimeks (51%)	Okrasa GmbH & Co KG (W Germany 49%)	58[illegible] R	Production of sport cars
35 24-03-88	Telur	Parmskiy Telephone Factory (51%)	Telefonica International & Amper (Spain 49%)	5 6 mn R	Production of electronic telephones & other means of communication
36 30-03-88	Kompaniya Leningrad-Chayka	Leningrad City & Cafe Trust (51 4%)	Kompaniya "Chayka" & Beer Brewery "Bavaria" Sankt Pauli AG (W Germany 48 6%)	350 000 R	Sale of services related to running a German beer restaurant

Source: Business Eastern Europe (25 April 1988) 131, and (2 May 1988) 141.

APPENDIX I

TABLE 6

Joint ventures domiciled in Czechoslovakia*

Joint company	*Founded*	*Foreign partner(s) (enterprise and country)*	*Equity share*	*Czechoslovak partner(s)*	*Equity share*	*Capitalization*	*Type or branch of activity*
1 AVEX	1987	N V Philips (Netherlands)	20%	Tesla Consumer Electonics FTO Transakta	70% 10%	US$5 0 million	Manufacture, sales and export of video recorders
2 TESSEK	1987	AS Senetek (Denmark)	49%	Tesla Laboratory Equipment	51%	US$ 2.0 million	Development, manufacture, sale and export of products used for liquid chromatography
3 HOTELINVEST a	1988	WARIMPEX (Austria)	40%	CEDOK Travel Organization	51%	n a.	Renovation of existing hotels and construction of new ones, also hotel management

* Based on reports appearing in western periodicals Covers the period to 31 December 1987

a Established on 3 January 1988

4. TOURINVEST	1988	CAMPENON BERNARD (France)	49%	CEDOK Travel Organization	51%	Ffr 75 million	Renovation of a hotel in Bratislava; construction of a hotel in Prague.
5. BALNEX	1988	WARIMPEX (Austria)	n.a.	BALNEA	n.a.	n.a.	Construction and renovation of health spas.
6. RECOOP TOUR	1988	TRADEX (Austria)	n.a.	REKREA	n.a.	n.a.	Construction of a hotel and air terminal in Prague.
7. LUWEX	1988	Austrian firm	n.a.	AIR ENGINEERING WORKS, Milevsko	n.a.	n.a.	Production of air-conditioning and ventilation equipment.
8. MSZ	1988	West German firm	n.a.	DOLNI NEMEC cooperative farm	n.a.	n.a.	Livestock breeding.

Sources: United Nations Economic Commission for Europe, East-West Joint Ventures: Economic, Business, Financial and Legal Aspects (New York: United Nations Publications, 1988) at 76 and "CSSR Lists Western JVs", Business Eastern Europe (2 May 1988) 138.

APPENDIX J

TABLE 7

Joint ventures domiciled in Poland*

Joint company	*Founded*	*Foreign partner(s) (enterprise and country)*	*Equity share*	*Polish partner(s)*	*Equity share*	*Capital-ization*	*Type or branch of activity*
1 LIM	1987	Marriott International Hotel Co (United States) Ilbau Construction Co (Austria)	24% 24%	LOT Polish Airlines	52%	1 2 billion Austrian schilling	Construction and operation of a 1,000-bed hotel, conference centre and gambling casino in Warsaw
2 TECHNODIAMANT	1987	FLT Metaux (Belgium)	n a	Technocabel CIE IMPEXMETAL	n a	n a	Manufacture and sale of cutting tools incorporating natural and synthetic diamonds
3 INTERKOTLIN	1987	VOS Produktenhandel (Netherlands)	n a	Agropol, RSP Kotlin	n a	n a	Processing, drying and packaging of fruits and vegetables for export
4 CEMENT TECHNOLOGY POLAND	1987	Zement and Fasertechnik (Federal Republic of Germany)	49%	Budimex Izolacja Chicice Izolacja Katowice	36% 11% 4%	z 100 m	Manufacture of cement and wood-chip panels and related elements
5 DIGITAL LABORATORIES INTERNATIONAL	1987	Active Technologies Anglodal Ltd. (both United Kingdom)	n a	LABCOMP, UNIMOR, UNITRAELTRA	n a	n a	Develop & manufacture products in field of computers, robotics, and opto electronics
6 ITHK	1987	Industrie Technik Walzwerksanlagen GmbH (Federal Republic of Germany)	n a.	Huta Kosciusko	n a.	n a	Processing of metallurgical waste, services and consulting for the steel industry
7 POLNISSKOSHER	1987	Kearnot International Handel -und Wirtschafts Industrie-Anlagen A G (Liechtenstein)	n a	POLMOS	n a	n a	Production of kosher alcoholic beverages and other kosher food products
8 ATEMPOL	1987	ATEM-Gesellschaft fuer Automatisierungstechnik (Federal Republic of Germany)	n a	CENTROZAP Hutmaszprojekt-Hepelko	n a.	n a.	Development of programmes for NC and CNC machine tools
9 FURNEL INTERNATIONAL	1987	International Computers Ltd (United Kingdom)	n a	PAGED, METRONEX, Computer enterprise MERO-ELZAB, TIMBER enterprise MARCHLEWSKIEGO, Enterprise Great Proletariat, Krakow furniture enterprise, Jasle particle board enterprise, District Board for State Forests	n a	n a	Development and manufacture of furniture, computers, other electonic products, provided software and consulting services
10 EURO-KONFEX	1987	Euro-Paletten Import GmbH (Federal Republic of Germany)	n a.	CPOLEM	n a	n a.	Wood processing
11 HANNA BARBERA POLAND	1987	Hanna Barbera Productions, Curtis International (United States)	n a.	PP Studio Bielsko-Biala, PP Popular Film Studio Wroclaw	n a.	n a.	Jointly produce animated films, manage sale of copyrights for Hanna Barbera VCR films in Poland & other CMEA countries
12. SEMECO	1987	Svenska Corab A B (Sweden)	n a.	SERWMOTOR, METROL	n a.	n a.	Produce packaging for video cassettes, compact disks, baby sanitary products, adhesive labels, tourist products and household appliances
13 INTERPRINT	1987	RMC Textile Group (Denmark)	n a.	DZIANILANA, TEXTILIMPEX	n.a.	n a.	Provides technical services for embossed printing on textiles

* Based on reports appearing in western periodicals. Covers the period to 31 December 1987

Sources: United Nations Economic Commission for Europe, East-West Joint Ventures: Economic, Business, Financial and Legal Aspects (New York: United Nations Publications, 1988) at 77.

APPENDIX K

DRAFT PROTOCOL FOR A JOINT VENTURE IN THE U.S.S.R.

The following is a draft protocol for a Joint Venture that was recently made available from various Ministries of the Government of the USSR. It may be used as a model and by its nature is only a starting point for negotiations. Please note that this is an unofficial translation and draft text only.

P R O T O C O L

Of Intent between Firm _____ on the one hand, and V/O _____ (or another organization on behalf of the Ministry, or the Department), on the other hand, concerning a Joint Venture in the USSR territory to produce _____ (object of production).

(Site of Signature) _____

(Date of Signature) _____

PREAMBLE

V/O _____ and Firm _____, desirous to promote long-term cooperation between the USSR and _____ within the framework of the agreements _____ concluded between the Governments of these countries;

Recognizing the importance and mutual benefit of cooperation between V/O _____ and Firm _____ in establishment of a Joint Venture in the USSR territory to produce _____ (object of production) and with the view to coordinate efforts aimed at achieving the highest technical and economic effect in the field of _____ (field of cooperation) state the following intentions concerning the principles of the long-term cooperation.

1. **SUBJECT**

The purpose of cooperation is establishment in the USSR territory of a Joint Venture to produce _____ (object of joint production) and marketing of these products in the USSR territory, _____ (country of the firm) and in third countries.

2. OBJECT/OBJECTS OF JOINT PRODUCTION

The object of joint production shall be _____ (Trade of Firm name of Products). Field of application _____. Technical specifications of object of joint production: _____

As demand in the sales markets changes, technical specifications of objects/objects can be readjusted by the decision of the parties in the course of production.

3. ORGANIZATION OF JOINT VENTURE

To establish the joint venture capital is required in the amount of _____ (to be specified during negotiations). Here the share of the Soviet partner shall be not less that 51 percent of the amount of the capital, and the firm's share of 49 percent of the amount of the capital.

The Soviet side, as investment of its share of capital, may provide for the following:

- lease of site of _____M2 (The cost to be specified during negotiations);
- technological equipment (the list of equipment available at the enterprise shall be subject to negotiations with the firm in terms of correspondence of supposed technology to future production. The value of the list of equipment shall be finalized with the firm);
- available infrastructure including social issues (canteen, club, etc.);
- raw and other materials (cost and annual volumes to be specified during negotiations);
- cost of other services (participation in modernization, reconstruction, supply of necessary components, etc.)

4. METHOD OF STANDARDISATION OF OBJECT OF JOINT PRODUCTION

Technical documentation necessary for operating the joint venture shall be _____ (domestic, foreign or joint development).

Technical documentation shall be submitted _____(by when) in the necessary and sufficient volume and character to start production of object meeting world standards and requirements of future markets.

The list of necessary technical documentation _____ shall be specified during negotiations.

Upon receipt of technical documentation in full volume the parties shall agree upon the following organization of work to make trial sample of object/objects of joint production _____ (procedure, organization, time-limits to be agreed upon additionally).

5. PLANNED VOLUMES OF PRODUCTION

Planned volumes of production by years shall be as follows: _____.

6. ORGANIZATION OF ACTIVITY OF JOINT VENTURE

While elaborating the agreement and by-laws of joint venture the following principles may apply:

- property of joint venture shall be evaluated in _____ (currency) and taking into account world prices;
- partner firm may utilize its share of profit for new investment into development of the enterprise; production;
- the enterprise shall plan its activity upon the basis of demand in the sales markets and upon foreign exchange potentials of the partners;
- foreign trade operations related to the economic activity shall be effected by the joint venture itself or through Soviet foreign trade organizations. Provision of Soviet production with material resources and sales of products to Soviet consumers shall be effected through Soviet foreign trade organizations at agreed prices, taking into account world prices;
- the enterprise staff shall be composed mainly of Soviet citizens. The enterprise shall be managed through the board and the management.

The Board shall be the highest body of the joint venture. Current operation of the economic activity shall be carried out by the management. Chairman of the Board and General Director shall be citizens of the USSR.

Conditions of payment and schedule of work and rest of Soviet citizens employed by the joint venture, their social security and insurance shall be regulated by Soviet labour legislation and paid by the enterprise.

These norms apply to foreign citizens who will work at the enterprise, without covering the matters of payment of labour, leaves and provision of pension. Necessary deductions shall be transferred by the enterprise into the country of permanent residence of a particular foreign specialist to the budget of the partner firm.

A list of jobs and number of highly skilled foreign specialists shall be agreed upon while preparing the agreement.

- the enterprise's liabilities under its obligations shall be limited only to its property.

- the enterprise shall be established and shall operate on the basis of USSR legislation, the enterprise's by-laws and the agreement. The enterprise shall start its activity after being registered with competent Soviet agencies. The joint venture shall be a juridical person of Soviet law.

- When necessary, a branch of the joint venture may be established in the territory of the partner firm s country which shall be registered in accordance with legislation of that country.

7. MODEL STRUCTURE OF THE BY-LAWS OF JOINT VENTURE

To prepare the by-laws of the joint venture the parties suggest its following structure:

7.1 Name of Joint Venture, registered addresses
7.2 Legal status of Joint Venture
7.3 Objectives of Joint Venture
7.4 Capital
7.5 Rights of Founders

7.6 Meeting of the Board
7.7 Decisions of Meetings of the Board
7.8 The Management
7.9 Decision of the Management
7.10 Officials
7.11 Finance and Audit
7.12 Attraction of Funds
7.13 Principle of Profit Distribution
7.14 Liquidation
7.15 Validity Period of the agreement. On establishment of the joint venture the protocol of intent cannot be construed as a legal basis for any commercial obligations of the parties that signed it.

The Protocol shall be valid till _____, 198__.

Signed:

For the Firm:

For V/O (or for other organizations on behalf of the Ministry, Department);

NOTE: The above issues are model issues and can be amended (reduced) with necessary data obtained in the course of negotiations. The provisions of the protocol can be implemented only subject to adoption of the relevant legislative act of the USSR on establishment and operation in the USSR territory of joint ventures with firms of capitalist countries.

Source: U.S.S.R. Trade Mission in Ottawa.

APPENDIX L

PROTOCOLE D'ENTENTE POUR ENTREPRISES EN PARTICIPATION EN U.R.S.S.

Le texte qui suit est un modèle de protocole d'entente pour entreprises en participation récemment mis de l'avant par divers ministerés du gouvernement soviétique. Vous noterez que ce texte est une traduction non-officielle et, qu'à ce titre, il n'a qu'une valeur de brouillon. L'on peut s'en servir comme modèle mais il ne constitue qu'une base de négociation.

N.B. (1): dans le texte, le préfixe V/O devant chaque F.T.O. (organismes chargés du commerce extérieur de l'U.R.S.S.) doit être suivi du nom de l'organisme pertinent ou de l'agence compétente en U.R.S.S.

N.B. (2): Le terme anglais joint venture a été traduit par l'expression "entreprise en participation".

PROTOCOLE

d'intention entre la compagnie _____ d'une part, et V/O _____(ou une autre organisation au nom d'un ministère ou d'un département), d'autre part, concernant une entreprise en participation sur le territorire de l'U.R.S.S. dans le but de produire _____(produit).

PRÉAMBULE

V/O _____ et la compagnie _____ désireux de promouvoir la coopération à long-terme entre l'U.R.S.S. et (le Canada) dans le cadre des accords _____ conclus entre les gouvernements de ces pays;

Reconnaissant l'importance et l'avantage mutuel d'une coopération entre V/O _____et la compagnie _____ dans l'établissement d'un entreprise en participation sur le territoire de l'U.R.S.S. dans le but de produire _____ (produit); et afin de coordonner les efforts visant à atteindre les plus hauts standards techniques et économiques dans le domaine de _____ (domaine de coopération); font état des intentions suivantes concernant les principes d'une coopération à long-terme.

1. SUJET

Le but de cet effort de coopération est l'établissement sur le territoire de l'U.R.S.S. d'un entreprise en participation visant la production _____ _____(produit en production conjointe) et la mise en marché de ce produit sur le territoire de l'U.R.S.S., (du Canada) et dans des pays tiers.

2. OBJET/OBJETS DE PRODUCTION CONJOINTE

L'objet en production conjointe sera _____(type de produit ou marque de commerce). Son domaine d'application est _____ _____. Les spécifications techniques de l'objet en production conjointe sont: _____ _____ _____.

Etant donné que la demande sur le marché des ventes peut changer, les spécifications techniques du produit/des produits peuvent être réajustées en cours de production suite à une décision des parties impliquées.

3. ORGANISATION DE L'ENTREPRISE EN PARTICIPATION

Pour instituer l'entreprise en participation un principal au montant de _____ _____(à spécifier lors des négociations) est requis. La part de l'U.R.S.S. ne sera pas inférieure à 51 pourcent du principal et celle de la compagnie _____ ne dépassera pas 49 pourcent du principal.

Le côté soviétique, pour acquitter sa part du capital, peut fournir les éléments suivants:

- bail du site de _____M2 (montant à déterminer lors des négociations);
- équipement technologique (la liste des équipements disponibles pour l'entreprise sera sujette à négociation avec la compagnie et sera déterminée en relation avec l'utilisation anticipée de la technologie dans la future production. La valeur desdits équipements sera agrée avec la compagnie);
- infrastructures disponibles incluant les apports sociaux (cantine, club, etc...);
- matières premières et autres matériels (coût et volume annuel à déterminer lors des négociations);
- coût d'autres services (participation à la modernisation, reconstruction, fourniture de composants, etc...).

4. MÉTHODE DE STANDARDISATION DE L'OBJET EN PRODUCTION CONJOINTE

La documentation technique nécessaire à l'opération de l'entreprise en participation sera _____ (domestique, étrangère ou développée de façon conjointe).

La documentation technique sera soumise _____ (date) en quantité suffisante pour débuter la production d'un produit répondant aux normes internationales et aux exigences futures du marché.

La liste de la documentation technique nécessaire _____ sera déterminée lors des négociations.

Sur réception de toute la documentation technique nécessaire, les parties seront convenues de l'organisation suivante du travail afin de produire les échantillons de l'objet/des objets de production conjointe _____ _____(procédure, organisation et délais à être stipulés)..

5. VOLUME DE LA PRODUCTION

Le volume de la production sur une base annuelle sera le suivant: _____ _____.

6. ORGANISATION DES ACTIVITES DE L'ENTRREPRISE EN PARTICIPATION

Lors de l'élaboration de l'accord et des règles régissant l'entreprise en participation les principes suivants pourront s'appliquer:

- les propriétés de l'entreprise en participation seront évaluées en _____(monnaie) en tenant compte des prix mondiaux;

- la compagnie associée pourra utiliser sa part de profit pour fins d'investissement dans le développement de l'entreprise ou de sa production;

- l'entreprise planifiera ses activités en fonction de la demande sur le marché des ventes et en fonction du potentiel générateur des partenaires en devises étrangères;

- les transactions de commerce international reliées aux activités économqiues de l'entreprise en participation seront effectuées par l'entreprise elle-même ou par une agence (organisation) soviétique compétente. La fourniture d'intrants pour fins de production et la vente de ces produits aux consommateurs soviétiques seront gérées par des F.T.O. (Agences soviétiques de commerce international) à des prix négociés tenant compte des prix internationaux.

- le personnel de l'entreprise sera principalement composé de citoyens soviétiques. L'entreprise sera gérée par un conseil d'administration et par des cadres.

Le conseil d'administration sera l'instance première de l'entreprise en participation. La gestion des affaires courantes sera sous la responsabilité de la Direction. Le Président du conseil d'administration et le Directeur général seront des citoyens de l'U.R.S.S..

Les conditions de travail, le temps de repos, les échelles salariales, les assurances et la sécurité sociale des employés soviétiques de l'entreprise seront régis par le code du travail et les lois soviétiques et seront payés par l'entreprise.

Ces mêmes normes s'appliqueront aux citoyens étrangers travaillant dans l'entreprise mais ne couvreront pas les questions de la rémunération du travail, des congés et des pensions. Les déductions nécessaires seront transférées par l'entreprise vers le pays de résidence permanente du spécialiste étranger au budget de la compagnie associée.

Une liste des postes et le nombre d'employés hautement spécialisés seront sujets à entente lors des négociations préparatoires à l'accord:

- le passif de l'entreprise sous ses engagements sera limité à seulement sa propriété;

- l'entreprise sera établie et opérera selon les lois soviétiques, ses propres statuts et les clauses de l'accord. L'entreprise commencera ses activités après s'être enregistrée auprès des agences soviétiques compétentes. L'entreprise en participation sera une personne juridique selon la loi soviétique;

- Lorsque nécessaire, une succursale de l'entreprise en participation pourra être établie sur le territoire du pays de la compagnie associée et être enregistrée selon les lois de ce pays.

7. MODELE DE STATUTS (DE CHARTE) POUR L'ENTRERPRISE EN PARTICIPATION

Afin de préparer les statuts (ou la charte) de l'entreprise en participation, les parties suggérent la structure suivante:

7.1 Nom de l'entreprise en participation, adresses enregistrées
7.2 Statut légal de l'entreprise en participation
7.3 Buts de l'entreprise en participation
7.4 Capital
7.5 Droits des fondateurs
7.6 Réunions du Conseil d'adminstration

7.7 Décisions du Conseil d'administration
7.8 La Direction
7.9 Décisions de la Direction
7.10 Les cadres (de l'administration)
7.11 Finance et vérification des comptes
7.12 Sources de financement
7.13 Répartition des profits
7.14 Liquidation de l'entreprise
7.15 Période de validité de l'accord (lors de l'établissement de l'entreprise en participation le protocole d'entente ne peut être considéré comme ayant une valeur légale pour fins d'obligations commerciales de la part des signataires).

Le Protocole est valide jusqu'au _____, 198 _.

Signé:

Pour la compagnie:

Pour V/O (ou pour d'autres organisations au nom du Ministère ou Département):

N.B.: Le modèle précédent n'est présenté qu'à titre d'exemple et peut être amendé au besoin lors des négociations. Les clausès du protocole seront mises en application suite à l'adoption de mesures législatives pertinentes (par le gouvernement de l'U.R.S.S.) concernant l'établissement et l'opération sur le territore de l'Union soviétique d'entreprises en participation avec des compagnies provenant de pays à économie de marchés.

Source: Mission de Commerce de l'U.R.S.S. à Ottawa.