

COMMENTS

INTERNATIONAL JOINT ENTERPRISES IN THE SOVIET UNION

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Foreign businesses greeted the enactment of legislation permitting them to form joint enterprises (*sovrestnye predpriyatiya*) with domestic organizations in the Soviet Union cautiously. The curtailment of Soviet trade with the West after the demise of détente and the mixed fortunes of comparable endeavors in other so-called socialist countries led them to seek guarantees of control over the management of any joint enterprises formed in Soviet territory and assurances that the Government and Communist Party would not undermine foreign efforts to do business in the Soviet Union. These foreign companies also questioned inconsistencies and gaps in the laws. Nevertheless, both the published legislation and official Soviet policies have been remarkably accommodating to foreign investors. They have let foreign investors and the new businesses decide many of their own procedures. At the same time, Western companies transacting business in the Soviet Union have been satisfied with their progress and impressed with the reliability of their trading partners.¹

The Benefits of Multinational Joint Enterprises

Under the New Economic Policy of the 1920s, foreign companies were allowed to hold mining and manufacturing concessions in the Soviet Union. The All-Union Soviet of People's Commissars abolished this practice in 1930.² During the next five decades, there

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1. Feder, *Soviet Joint Ventures Face Obstacles*, N.Y. Times, June 20, 1988, at C8, col. 1.

2. Comment, *Joint Ventures in the Soviet Union: A Legal and Economic Perspective*, 16 HARV. INT'L L.J. 390, 390 (1975) (authored by James F. Pedersen).

were two ways in which businesses from other countries could make deals within Soviet territory: the industrial co-operation agreement (ICA) and the compensation agreement. Both are still used today.

Under an ICA, the Soviet participant retains or acquires control over productive technology, and the foreign participant is paid in goods rather than in hard currency.³ In the past, industrial co-operation agreements allowed the Soviet state to retain its constitutionally mandated ownership of the means of production⁴ and to prevent the foreign concern from having any equity in the technology used. Compensation agreements involved the exchange of goods between a foreign company and one or more Soviet foreign trade organizations (FTO's) based on a system of credits.⁵ Few Western companies use compensation agreements. For example, Occidental Petroleum, which had two compensation agreements with FTO's, was the only American firm employing such an arrangement in 1987.⁶

For both parties, the advantages of both the ICA and the compensation agreement are limited. The foreign trading partner may find that the purchaser has squeezed it out of the Soviet market.⁷ Meanwhile, the domestic participant's capital investment depreciates rapidly. Also, because the foreign vendor lacks title to the technology, it has little reason to keep it up to date. Moreover, the Soviet Union's weak infrastructure causes equipment imported from the West to be only about two-thirds as productive as identical equipment in the country of manufacture.⁸ Soviet technical knowledge and labor skills have also lagged behind.

One result of these restrictive policies was that the Soviet Union had little to export to the West or other socialist countries in Europe beyond fuels and other raw materials, even as it imported manufactured goods.⁹ Although the Soviet Union did not borrow from Western banks as heavily as some other Eastern European nations, it has consistently run a trade deficit with the United States and other Western countries and has suffered a chronic shortage of hard currency.¹⁰ Partly as a result of this shortage, many consumer goods have become extremely difficult for the average Soviet citizen to obtain. Socialist countries looked to joint enterprises as a means of mitigating these problems.¹¹

3. See, e.g., M. KNIGHT, HOW TO DO BUSINESS WITH RUSSIANS 49-51 (1987).

4. See KONST. SSSR, art. XI.

5. M. KNIGHT, *supra* note 3, at 51-52.

6. *Id.* at 51.

7. B. BUBNOV, FOREIGN TRADE WITH THE USSR 63 (1987).

8. M. GOLDMAN, GORBACHEV'S CHALLENGE 144 (1987).

9. See M. KNIGHT, *supra* note 3, at 17-23; Marrese, *CMEA: Effective but Cumbersome Political Economy*, 40 INT'L ORG. 287, 289 (1986).

10. See, e.g., M. KNIGHT, *supra* note 3, at 128.

11. See Decree on Joint Enterprises with Western and Developing Countries, art.

In a joint enterprise, two or more entities own and share the profits of another business organization. Generally, the owners complement each other. When the co-owners are from different countries, the domestic participant generally provides the commercial base, and the foreign one the technical expertise.¹² Unlike a joint venture, there is no partnership. The daughter business is legally independent from its parents.¹³ Since the foreign company has a direct stake in the daughter firm, it has a reason for improving its employees' training and for maintaining and modernizing its equipment. Furthermore, the host government can require the joint enterprise to make its revenue payments in hard currency and thereby force it to export.

Enactment of Joint Enterprise Legislation

Beginning with Yugoslavia in 1967, other countries which had implemented Stalinist programs and experienced similar results enacted laws which allowed mixed foreign and domestic ownership of business organizations.¹⁴ By 1987, about 3,000 such joint enterprises had been established in six countries. Roughly two-thirds of these were in China. Poland had about 670, Yugoslavia 200, and Hungary 50. Bulgaria had nine and Romania only five.¹⁵ A sev-

3, *Sobranie Postanovlenii i Pravitselstva SSSR* [SP SSSR], no. 9, item 40 (1987), [English translation] *reprinted in* 26 I.L.M., at 749, 750-51 (1987) [hereinafter 1987 Joint Enterprise Decree]; Mamet, *Tax Aspects of Joint Ventures*, 41 BULL. INT'L FISCAL DOCUMENTATION 452, 455-56 (1987); Decree on Constitution, Organization and Operation of Joint Companies in the Socialist Republic of Romania [hereinafter Romanian Joint Venture Decree], art. 2, BULETINUL OFICIAL AL REPUBLICII SOCIALISTE ROMÂNIA, no. 424, Nov. 2, 1972 (Rom.) [English translation], *reprinted in* 12 I.L.M., at 654, 655 (1973).

12. See J. WALMSLEY, HANDBOOK OF INTERNATIONAL JOINT VENTURES 71 (1982).

13. Compare BLACK'S LAW DICTIONARY 753 (5th ed. 1979) ("[A joint venture is] a legal entity in the nature of a partnership engaged in the joint prosecution of a particular transaction for mutual profit.") (citing *Tex-Co. Grain Co. v. Happy Wheat Growers, Inc.*, 542 S.W.2d 934, 936 (Tex. Civ. App. 1976)) with 1987 Joint Enterprise Decree, art. 6.

14. Current regulations include Decree No. 535 on Economic Co-operation Between Bulgarian Juridical Persons and Foreign Juridical and Physical Persons, DURZHAVEN VESTNIK no. 25, Mar. 25, 1980 (Bulgaria); Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment July 1, 1979 [hereinafter Chinese Joint Venture Law], [English translation] BEIJING REV., July 20, 1979, *reprinted in* 18 I.L.M., at 1163; Decree No. 7/1977 of the Ministry of Finance, MAGYAR KÖZLÖNG no. 35/1977, May 6, 1977 (Hung.); Decree No. 5/1979 of the Ministry of Finance, MAGYAR KÖZLÖNG no. 10/1979; Resolution No. 24 of the Polish Council of Ministers and Annex Thereto, MONITOR POLSKI no. 4 (Feb. 23, 1979); Romanian Joint Venture Decree, *supra* note 11; Zakon o Ulaganju Sredsteva Stranh Lica u Domnce Organizacije Udruzenog Rada [Law on Investing by Foreign Persons into Domestic Organizations of Associated Labor], SLUZBENI LIST SFRJ no./1978 (Yugo.), *summarized in* YUGOSLAV L. No. 2/1978, at 51-52. See Scriven, *Cooperation in East-West Trade: The Equity Joint Venture*, 10 INT'L BUS. LAW. 105, 110 n.7 (1982).

15. B. BUBNOV, *supra* note 7, at 61.

enth country, Czechoslovakia, had enacted a joint enterprise law in 1986.¹⁶

During the 1970s, the Bendix Corporation offered to help the Soviet government form joint enterprises in the Soviet Union. However, the Politburo refused to authorize the necessary legislation.¹⁷ In 1983, the Presidium of the Supreme Soviet issued an edict permitting Soviet business organizations to form "joint economic organizations" within Soviet territory with counterparts from other member states of the Council for Mutual Economic Assistance (Comecon).¹⁸ The edict was short. It left the procedures for its implementation to be determined by the Council of Ministers.¹⁹ The new law had no practical effect for more than three years.

In July, 1986, General Secretary Gorbachev hinted on a trip to Vladivostok that the Government might soon authorize international joint enterprises in the Soviet Union.²⁰ In August, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers adopted joint decrees on the restructuring of economic relations with Comecon members and with other nations.²¹ In September, the Government reorganized the Ministry of Foreign Affairs, which was accused of being corrupt and inefficient. The reforms included establishing an international economic department in the Ministry.²² Foreign interest in joint enterprises in the Soviet Union quickly rekindled.

On January 13, 1987, the Council of Ministers promulgated a decree, retroactive to the beginning of the year, authorizing the formation of joint enterprises between companies from states outside of Comecon and designated Soviet ministries and production organizations.²³ This decree was much more elaborate and explicit than its 1983 companion law. On the same day, the Presidium of the

16. See *Czechoslovakia: Joint Ventures*, 26 EUR. TAX'N 113 (1986).

17. M. GOLDMAN, *supra* note 8, 144 (1987).

18. Edict on the Procedures for Effectuating Activity on the Territory of the USSR of Joint Economic Organizations of the USSR and other Comecon Countries, Ved. Verkh. Sov. SSSR no. 22, item 330 (1983), [English translation] reprinted in W. BUTLER, BASIC DOCUMENTS ON THE SOVIET LEGAL SYSTEM 263 (1983) [hereinafter 1983 Edict]. The other active member states of Comecon (also known as the CMEA) are Bulgaria, Cuba, Czechoslovakia, the German Democratic Republic, Hungary, the People's Republic of Korea, Mongolia, Poland, Romania and Vietnam.

19. *Id.* at art. 3.

20. Foreign Broadcast Information Service Daily Report, Soviet Union, July 29, 1986, at R15, cited in M. GOLDMAN, *supra* note 8, at 145 n.27.

21. Pravda, Sept. 24, 1986, at 1, cited in M. GOLDMAN, *supra* note 8, at 145 n.29. For an unofficial version of the texts of these decrees, see EKONOMICHESKAIA GAZETA no.6, at 15-16, 17-18 (1987), cited in 26 I.L.M., at 749 (1987).

22. EKONOMICHESKAIA GAZETA, Feb. 1987, at 4, cited in M. GOLDMAN, *supra* note 8, at 146 n.30.

23. 1987 Joint Enterprise Decree. The distinction between Comecon members on the one hand and Western and developing nations on the other hand made in the titles of the 1983 and 1987 laws is misleading. A Yugoslav-Soviet joint enterprise in the

Supreme Soviet issued a companion edict regulating the taxation of the new organizations.²⁴ Firms from both Comecon and other countries began the paperwork necessary for setting up joint businesses. On May 12, 1987, the Ministry of Foreign Affairs registered the first international joint economic organization in the Soviet Union, backed by the Littara organization of Vilnius and the Volanpack concern from Hungary.²⁵

Soviet Participants in International Joint Enterprises

The Council of Ministers' decree states that foreign firms, singly or in concert, may form a joint enterprise with "[o]ne or more several Soviet enterprises (or associations [or] other organizations)."²⁶ However, while any foreign enterprise with legal status in its own country could, in theory, contract with a Soviet entity to form a joint enterprise, initially only twenty-one ministries, sixty-eight Soviet enterprises or production organizations, and eight inter-industry research and production groups or research centers received the authority to participate with them.²⁷

The sixty-eight enterprises selected were concentrated in a narrow range of heavy industries. Three-quarters were involved in mechanical manufacturing or electronics. The rest specialized in chemicals or construction materials. The service industries and other industrial sectors, such as agriculture, textiles, lumber, and paper were unrepresented,²⁸ although they later began to receive authorization to participate in joint enterprises.

The selected ministries were more diverse. They included, for example, the Committee for Publishing, Printing, and Bookselling, the Ministry of the Medical Equipment and Microbiological Industry, and the Ministry of the Merchant Marine.

The production organizations were concentrated in the Slavic heartland. All but three were headquartered in European Russia, Byelorussia, or the Ukraine.²⁹ Estonia, Latvia, and Asiatic Russia

Soviet Union, for example, would be governed by the later law, even though Yugoslavia is not generally considered to be either a Western or a developing country.

24. Edict Concerning Taxation of Joint Enterprises in the Soviet Union and Dispute Settlement, *Ved. Verkh. Sov. SSSR*, no. 2, item 35 (1987), [English translation] reprinted in 26 *I.L.M.*, at 759 (1987) [hereinafter Taxation Edict].

25. Mamet, *supra* note 11, at 459.

26. 1987 Joint Enterprise Decree, art. 4.

27. Gicquiau, *Portrait des 68 Entreprises Soviétiques Accédant au Marché International*, 315 *LE COURRIER DES PAYS DE L'EST* 23, 23 (1987) [hereinafter L.C.D.P.D.E.]; B. BUBNOV, *supra* note 7, 63, 76-89. For a detailed profile of the Soviet ministries and enterprises, see Gicquiau at 26-67. Bubnov lists the names, addresses and telephone numbers of the research and production groups as well as those of the ministries and enterprises.

28. Gicquiau, *supra* note 27, at 23-25.

29. B. BUBNOV, *supra* note 7, at 88-89.

had one apiece. Of the eight designated research centers, six were in European Russia and two were in the Ukraine. The only production organization east of the Urals was the Sayanmramor marble mill in Sayanogorsk, Krasnoyarsk *krai*.³⁰ The others apparently had few property holdings in Asia. One, Zil, based in Moscow, intended to open a car and truck factory in 1975 in the Soviet Far East, but the plant has never been completed.³¹

This distribution was somewhat surprising. General Secretary Gorbachev had originally spoken of joint enterprises as a means of opening up trade with Japan and bringing the Soviet Union into the economy of the Pacific Basin.³² It appears that *perestroika* may at first be an essentially Slavic or Baltic phenomenon and that Asian and Pacific business endeavors within the Soviet Union will have to expand in Europe before they reach other parts of the country, like Siberia and the Far East.

Ownership and Capital Structures

Under existing law, the Soviet share in a joint enterprise must comprise not less than fifty-one percent.³³ This provision drew heavy criticism from Western firms, which feared that they would have to cede control of their daughter enterprises to the Soviet co-owners.³⁴ In practice, however, overseas investors can protect themselves by drafting unanimity requirements, reservations of authority over particular kinds of decisions, and similar provisions into their charters. Furthermore, the Soviet government has announced that it will amend the law to allow foreign participants to own a substantial majority, perhaps eighty percent, of the shares in joint enterprises.³⁵

Even now, the majority-share requirement is less an obstacle to the formation of joint enterprises than it seems at first blush. According to Ninel N. Vosnesenskaya, a leading Soviet expert of joint venture law, the Ministry of Finance does not require that a joint enterprise be capitalized before registration.³⁶ The participants can add to the basic capitalization or charter fund with profits from the economic activities of the joint enterprise or with their own contributions.³⁷ Moreover, the parties can agree between themselves how

30. Gicquiau, *supra* note 27, at 24, 66; B. BUBNOV, *supra* note 7, at 87.

31. Gicquiau, *supra* note 27, at 41.

32. See Foreign Broadcast Information Service Daily Report, *supra* note 20.

33. 1987 Joint Enterprise Decree, art. 5.

34. Mamet, *supra* note 11, at 456.

35. N.Y. Times, Oct. 29, 1988 at A3, col. 1; N.Y. Times, Oct. 28, 1988, at A1, col.

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36. Feder, *supra* note 1.

37. 1987 Joint Enterprise Decree, art. 10.

to value assets with no easily determinable market value,³⁸ although non-monetary capital contributions may be valued at world-market prices³⁹ or according to official guidelines.⁴⁰

All participants in a joint enterprise have the right to transfer their shares. However, the owners must unanimously consent to the transfer, and the State Foreign Economic Commission of the Council of Ministers must approve the change. The Soviet co-owners have the right of first refusal to the shares held by the foreign participants.⁴¹

Charters, Registration Procedures, and Liquidation

Every joint enterprise must have a charter confirmed by its participants. The charter sets forth the scope of the enterprise, its owners, location, fiscal and administrative compositions, and certain procedures for governing and liquidating the operation. However, the participants can include any other provisions "which are not contrary to Soviet legislation and which appertain to the peculiarities of the activities of the joint enterprise."⁴²

Investors forming a joint enterprise should draft as comprehensive a charter as possible. A joint enterprise which attempted to expand its activities beyond those specified in its charter would not be able to enforce its ultra vires contracts,⁴³ and it is uncertain whether the owners of a joint enterprise would be allowed to amend the charter. Yet the Council of Ministers' decree does not make it clear what procedures will govern joint enterprises in many circumstances. For example, Soviet tax law provides that fixed assets be depreciated by a straight-line method according to standardized tables.⁴⁴ However, joint enterprises are exempt from Soviet taxes on profits during the first two years of their activity.⁴⁵ Foreign companies have responded to this ambiguity by drafting their own accounting and tax procedures into their charters.⁴⁶

Once the participants have agreed to a charter, they must register the joint enterprise with the Ministry of Foreign Affairs. A notice of the registration is published in the press.⁴⁷ Registrants must submit an application, an extract from the Council of Minis-

38. *Id.* at art. 12.

39. *Id.*

40. Feder, *supra* note 1.

41. 1987 Joint Enterprise Decree, art. 16.

42. *Id.* at art. 7.

43. *E.g.*, Grazhdanskii Kodeks RSFSR [GK RSFSR], arts. 48-50. The Civil Codes of the fifteen union republics are substantially the same. O. IOFFE, SOVIET CIVIL LAW 9 (1988).

44. Mamet, *supra* note 11, at 458.

45. Taxation Edict, art. 1.

46. Feder, *supra* note 1.

47. 1987 Joint Enterprise Decree, art. 9.

ters' decree, their proposed charter and, when asked, other documents certifying the reliability of the information provided. Registration is free.⁴⁸

The first firms to set up joint enterprises had to deal with plenty of red tape. One of the first Western companies to form a joint enterprise in the Soviet Union, Sandoz A.G., a Swiss chemical company, had to gain the approval of fifteen government bodies, many of which knew little about joint enterprises. The Soviets are streamlining this process.⁴⁹

The procedure for liquidating a joint enterprise will resemble that for registration. A liquidation may be either in accordance with the charter or by the decision of the Soviet Council of Ministers. After satisfying their creditors, foreign participants have the right to receive their capital share in cash or goods. The liquidation becomes official upon its registration at the Ministry of Finance. Notice of the liquidation will be published in the press.⁵⁰

Rights and Obligations of Joint Enterprises

Once it registers with the Ministry of Foreign Affairs, a joint enterprise is considered a juridical person (*iuridicheskoe litso*).⁵¹ Juridical persons operate on the basis of a charter.⁵² They may possess property, enter into contracts in their own right, incur liabilities, and appear as a plaintiff or a defendant in a legal action.⁵³ In these respects, they resemble common-law limited-liability corporations or the civil-law *sociétés anonymes* which existed in the Soviet Union and other Eastern European countries before the imposition of Communist rule.⁵⁴

A registered joint enterprise whose charter permits it to do so may establish chartered branches within the Soviet Union. With a charter, the branch becomes a juridical person. Thus, the joint enterprise and the branch would not be responsible for each other's debts.⁵⁵

The Council of Ministers' decree affords joint enterprises a substantial amount of property protection. Their property is not subject to requisition or confiscation in administrative proceedings.

48. Mamet, *supra* note 11, at 456-57.

49. Feder, *supra* note 1.

50. 1987 Joint Enterprise Decree, arts. 51-53.

51. *Id.* at art. 6.

52. Fundamental Principles of Civil Legislation of the USSR and Union Republics, art. 11, Ved. Verkh. Sov. SSSR, no. 50, item 525 (1961), [English translation] *reprinted in THE SOVIET LEGAL SYSTEM: SELECTED CONTEMPORARY LEGISLATION AND DOCUMENTS* (Parker School Studies in Foreign and Comparative Law) 393, 397 (1978).

53. *Id.* See also, *e.g.*, GK RSFSR, art. 23.

54. See Scriven, *supra* note 14, at 106.

55. 1987 Joint Enterprise Decree, arts. 18-19.

Executions may be levied against a joint enterprise property only in accordance with Soviet legislation.⁵⁶ Furthermore, unlike other juridical persons in the Soviet Union, joint enterprises may hold patents and other property rights in their products.⁵⁷

These protections have not completely placated Western critics.⁵⁸ If an ideologically conservative faction took control of the Politburo or if the Soviet Union and the United States had a major disagreement, the Soviet government could rescind its legislation or could invalidate it as unconstitutionally limiting state ownership of the means of production. Moreover, the Soviet government could expropriate or nationalize the joint enterprises. Foreign investors have no guarantee that the government will never pursue such tactics. They must gamble that the current policies of *glasnost* and *perestroika* will continue and thereby help secure their economic interests in the Soviet Union.

The Board of Directors and the Director General

The management structure of Soviet joint enterprises resembles that of a Western company. A board of directors, headed by the chairman of the board and consisting of Soviet and foreign citizens appointed by the participants, oversees the organization. There is also a director general, to run the day-to-day operations. The chairman of the board and the director general of the joint enterprise must be Soviet citizens.⁵⁹ The board of directors and director general have no counterparts in other Soviet enterprises.⁶⁰

The Soviet Union is not the only Comecon country requiring that its citizens be at the pinnacle of the managerial structures of its joint enterprises. Bulgaria and Romania have similar provisions. "In principle," the management of Polish joint enterprises must be headed by a Polish citizen. In Hungary, the participants could negotiate this point in the articles of association.⁶¹ In China, which does not belong to Comecon, the Chinese participant chooses the chairman of the board, and the foreign participant selects one or two vice-chairmen, but the appointees could be citizens of any country.⁶²

The Soviet Union seems to have doubly handicapped itself with this rule and its restrictive emigration policies. Poland's liberal emigration laws have given it a large pool of citizens who have lived

56. *Id.* at art. 15.

57. *Id.* at art. 17.

58. *See, e.g.,* L.A. Times, May 24, 1988, at IV, 2, col. 1.

59. 1987 Joint Enterprise Decree, art. 21.

60. Tiraspolsky, *L'Organisation du Commerce Extérieur Soviétique Depuis le 1er Janvier 1987*, in 315 L.C.D.P.D.E. 4, Annexe 6, at 18-19.

61. J. WALMSLEY, *supra* note 12, at 23.

62. Chinese Joint Venture Law, art. 6.

abroad for long periods, know Western business techniques, and often hold citizenship or have the status of permanent residents in other countries.⁶³ These expatriate Poles and foreigners of Polish ancestry provide a bridge between the motherland and the outside world, just as overseas Chinese do for China. There are still too many political and ethnic barriers for Soviet expatriates and foreigners with ancestral ties to the areas now ruled from Moscow to co-operate with the Soviet government in the same way.

Labor

Most employees of a joint enterprise must be Soviet citizens. They will have the same rights as employees at a state-owned business. Foreign employees' Soviet incomes will be taxed. These employees may transfer abroad any unspent income which remains after taxation. The joint enterprise will make payments in hard currency to the overseas pension funds of their foreign employees.⁶⁴

Joint Enterprise and the Soviet Economy

Joint enterprises established under the Council of Ministers' decree are not completely integrated into the domestic economy. Although they have the right to import and export goods directly, they can trade with Soviet organizations only through FTO's. Transactions with FTO's are made in rubles "at contract prices, taking into account world market prices."⁶⁵ However, a joint enterprise must make its hard currency payments, such as overseas dividends and salaries to foreign employees, from its revenues earned in overseas trade.⁶⁶ Joint enterprises will have to engage heavily in export in order to pay their way. Consequently, they may not be an effective way for foreign firms to sell products to the Soviet market.

A joint enterprise must deposit its cash assets at a Soviet government bank. Accounts denominated in hard currency are held at the Foreign Trade Bank, and accounts in rubles at the State Bank. These accounts bear interest. Hard currency accounts earn at world money market rates. Fluctuations in the value of hard currency deposits against the ruble are considered part of an enterprise's profits and losses. The Foreign Trade Bank and State Bank also lend money "at commercial terms," but a joint enterprise may borrow hard currency from foreign financial institutions.⁶⁷

Joint enterprises with participants from outside Comecon take priority over state organizations in their domestic orders for con-

63. B. BUBNOV, *supra* note 7, at 61.

64. 1987 Joint Enterprise Decree, arts. 47-50.

65. *Id.* at arts. 24, 26.

66. *Id.* at art. 25.

67. *Id.* at arts. 27-29.

struction and assembly⁶⁸ but may rank last when ordering goods. Unlike intra-Comecon joint economic organizations, joint enterprises with co-owners from countries outside of Comecon do not participate in the central plans produced by *Gosplan*, the State Planning Committee.⁶⁹ Until *perestroika* shores up the economy, these joint enterprises may have to pay higher rates on scarce commodities or may be unable to purchase them when needed.

Some scholars have argued that the Soviet Union uses Comecon to bring other member states into its own central planning system by exporting raw materials to them at special foreign-trade prices below world-market rates and by importing manufactured goods from them at prices above the corresponding world-market rates.⁷⁰ Thus, joint enterprises with participants from Comecon member states may be at a competitive advantage against such organizations whose investors come from outside of Comecon.

Dispute Resolution

Disputes between a joint enterprise and other juridical persons or between the participants in a joint enterprise may be resolved in Soviet courts, or by arrangement of the parties, in an arbitration tribunal, or, when Soviet statutes so require, in state *Arbitrazh* agencies.⁷¹ These agencies are independent, administrative economic courts. They have compulsory jurisdiction over economic disputes within the Soviet state enterprise system.⁷² *Arbitrazh* agencies are not impartial and they decide cases in the interest of the Soviet state.⁷³ However, since joint enterprises are not part of the planned economy, it seems likely that they may rely on Soviet civil law and avoid these agencies.

Profits, Dividends, and Taxation

Participants in a joint enterprise share profits in proportion to their share participation in the charter fund. The management may distribute profits only after satisfying obligations to the Soviet state budget, filling a reserve fund and making payments to other funds designated in the charter. These other funds would normally be used for the development of production, science and technology and for paying creditors.⁷⁴ The reserve fund must not exceed twenty-five

68. *Id.* at art. 34.

69. *Id.* at art. 23.

70. See Marrese, *supra* note 9, at 289-91. See generally Marrese & Vaňous, *Unconventional Gains from Trade*, 7 J. COMP. ECON. 382-99 (1983).

71. Taxation Edict, art. 5.

72. See KONST. SSSR, art. 163; GK RSFSR, art. 166.

73. H. BERMAN, *JUSTICE IN THE U.S.S.R.* 124, 126 (1963).

74. Mamet, *supra* note 11, at 457.

percent of the capitalization.⁷⁵

Joint enterprises' taxable income has not yet been defined precisely. Payments to the reserve fund and other funds designated in the charter are clearly excluded.⁷⁶ Unlike a completely foreign institution trading in the Soviet Union or a foreigner working in the Soviet Union, joint enterprises will apparently not be able to deduct the costs of labor, productive materials, repairs, and other non-production expenses.⁷⁷

The standard tax rate is thirty percent of net profits. The Ministry of Finance has the right to reduce the amount of the tax or exempt an enterprise from taxation.⁷⁸ The original reason for allowing such reductions was to protect enterprises in distress.⁷⁹ In practice, businesses are often able to negotiate a lower tax rate for themselves on other grounds, for example, their potential to produce exports.⁸⁰

The joint enterprise will calculate its own tax. Soviet financial authorities may verify its calculations. Late payments may subject the taxpayers to penalties at the daily rate of .005%. The joint enterprise may appeal actions of tax authorities.⁸¹

Foreign investors do not recognize a gain on dividends from joint enterprises until the proceeds are transferred abroad, when they are normally subject to a tax of twenty percent.⁸² Several countries from outside of Comecon have concluded tax treaties with the Soviet Union which will govern Soviet taxation of dividends. American, Finnish, Norwegian, and Swiss investors are to be taxed at the standard rate, twenty percent. Spanish participants' dividends are taxable at the rate of eighteen percent. Canadian, Danish, Dutch, French, West German, and Swedish shareholders will pay a fifteen percent tax. Austrian, British, and Cypriot participants will pay no Soviet tax on dividends.⁸³

Cyprus has become the preferred conduit for profits flowing from the Soviet Union to third countries. Offshore companies in Cyprus pay one-tenth of the standard income tax rate. Currently,

75. 1987 Joint Enterprise Decree, arts. 30-31.

76. *Id.* at art. 36.

77. Compare *id.* and Mamet, *supra* note 11, at 457 with Decree of the Supreme Soviet Concerning the Taxation of Foreigners, May 12, 1978, cited in *U.S.S.R.: Some Tax Aspects of Soviet Joint Venture Law*, 27 *EUR. TAX'N* 161, 162 (1987).

78. 1987 Joint Enterprise Decree, art. 36.

79. Mamet, *supra* note 11, at 458.

80. See *id.*; Feder, *supra* note 1.

81. 1987 Joint Enterprise Decree, art. 37-40.

82. *Id.* at art. 41.

83. Official English texts or unofficial translations of most of these treaties can be found in *EUR. TAX'N* [Supp. Series], sec. C. See also *U.S.S.R.: Some Tax Aspects of Soviet Joint Venture Law*, 27 *EUR. TAX'N* 161, 162 (1987). The Swiss-Soviet tax treaty has not yet entered into force.

they are taxed at the rate of 4.25%.⁸⁴ One way to qualify for this preferential rate is for the company to incorporate in Cyprus. The Cypriot corporation must be owned exclusively by non-residents of Cyprus, and it must conduct its business and derive its income from activities outside of Cyprus. One offshore company may hold shares in another without compromising the tax privileges of either.⁸⁵

Offshore branches of foreign companies also receive a tax preference in Cyprus. Like an offshore corporation, the foreign company opening an offshore branch must be held entirely by non-residents. The parent company and the branch must have the object of their business entirely in other countries.⁸⁶ If the management and control of the parent are in Cyprus, the branch will be taxed at the same rate as an offshore company. If they are overseas, the branch will be completely exempt from income taxes.⁸⁷ Thus, dividends transferred from the Soviet Union to an offshore branch of an entirely alien company would not be taxable until they were delivered from Cyprus.

Companies seeking to use Cyprus as a tax haven must be careful of their own countries' anti-avoidance laws. The United States has particularly restrictive regulations. However, the parent of an offshore company incorporated in Cyprus may be able to protect itself by selling or leasing patents to its subsidiary.⁸⁸

Conclusion

The Soviet Union has permitted joint enterprises as a means of increasing its exports and gaining access to foreign skills and technology. The initial legislation gives a framework for overseas investors to start and run businesses in concert with Soviet organizations. The new firms have a unique managerial structure and are not integrated into the Soviet central planning system. They are partially integrated into the Soviet fiscal and legal systems. Foreign investors and employees have been guaranteed the right to transfer profits to their home countries. The participants also have the opportunity to draft many of their own regulations.

The first joint enterprises have set up operations. As they establish themselves, the Soviet government will have the opportunity to examine, refine, and expand this link to the world marketplace.

84. Income Tax Law, Law No. 15 of March 1977, § 28A (Cyprus), cited in *Cyprus: Turntable Between East and West*, 24 EUR. TAX'N 175, 179 (1984).

85. *Id.*

86. Cyprus Companies Law, § 347, cited in *Cyprus: Turntable Between East and West*, supra note 84, at 180 n.53.

87. Income Tax Law, Law No. 15 of March 1977, § 8(y) (Cyprus), cited in *Cyprus: Turntable Between East and West*, supra note 84, at 180 n.54.

88. *Cyprus: Turntable Between East and West*, supra note 85, at 182-84.