

# Establishing and Financing of a Joint Venture

## A commentary on the UN/ECE Guide on legal aspects of international (east-west) joint venture contracts

Norman Scott

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Article abstract

This article deals with a Guide prepared by the United Nations Economic Commission for Europe concerning east-west joint ventures. The publication focusses on the issues arising in the establishment and operation of east-west joint ventures in those European members countries of the Council for Mutual Economic Assistance (CMEA) which now allow this form of industrial co-operation in their respective territories — namely, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and the Soviet Union. In parallel with that Guide, the author exposes the importance and the contents of the contract itself with its main provisions.

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# Establishing and Financing of a Joint Venture

## A commentary on the UN/ECE Guide on legal aspects of international (east-west) joint venture contracts

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### ABSTRACT

*This article deals with a Guide prepared by the United Nations Economic Commission for Europe concerning east-west joint ventures. The publication focusses on the issues arising in the establishment and operation of east-west joint ventures in those European members countries of the Council for Mutual Economic Assistance (CMEA) which now allow this form of industrial co-operation in their respective territories — namely, Bulgaria, Czechoslovakia, Hungary, Poland, Romania and the Soviet Union. In parallel with that Guide, the author exposes the importance and the contents of the contract itself with its main provisions.*

### RÉSUMÉ

*Cet article est consacré au Guide préparé par la Commission Économique pour l'Europe des Nations Unies, sur les coentreprises (joint ventures) est-ouest. Cette publication expose les principales questions soulevées par l'installation et l'opération d'une coentreprise est-ouest chez les pays européens membres du Conseil d'Assistance Économique Mutuelle (CAEM) qui permettent maintenant cette forme de coopération industrielle sur leur territoire, soit la Bulgarie, la Tchécoslovaquie, la Hongrie, la Pologne, la Roumanie et l'Union Soviétique. En parallèle avec ce Guide, l'auteur explique l'importance et le contenu du contrat de coentreprise et analyse ses principales dispositions.*

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The United Nations Economic Commission for Europe celebrated its fortieth anniversary last year. During these four decades it has been the only forum where all the countries of Europe as well as the USSR, Canada and the United States seek to strengthen economic and technical co-operation. In view of its wide geographical membership, encompassing 34 member countries, it is evident that the ECE has always had to devote particular, but not exclusive, attention to the specific features of co-operation between countries having different economic systems.

This is true of the subject of my presentation — namely, east-west joint ventures on which the ECE will publish a contractual Guide next month.

The rules and practices governing the establishment and operation differ from those applied elsewhere. They are different precisely because the economic mechanisms of those countries reflect another approach to price and wage-setting, resource allocation, convertibility and so on from that of the market economies. A Guide on how to draw up an east-west joint venture contract therefore has to take into account the particular problems that arise in the interface between a planned and market environment and to indicate what difficulties should be anticipated during the negotiation of the contract.

By way of introduction I shall have something to say about how ECE contractual Guides are prepared. Then I will go on to discuss the contents of the Guide, singling out for attention the guidelines relating to issues of management which are of particular interest to participants in the Conference.

Responsibility for preparing ECE contractual Guides is vested in a body of intergovernmental experts set up by the ECE Committee on the Development of Trade. The intergovernmental body in question is called the Working Party on International Contract Practices in Industry in whose work some twenty member countries and international organizations take part by designating legal experts as their representatives.

The choice of the subject matter of each Guide is agreed by the legal experts in the light of perceived needs which change as changes occur in the forms of international co-operation or in national policies and regulations. Thus, in the early post-war years a series of standard general conditions of sale for the export and import of engineering equipment was drawn up and issued during the years 1953-1961. The experience acquired in dealing with the engineering industries was later extended to other sectors. As a result, standard contracts or general conditions of sale have been drawn up for a large number of products and services. Such conditions of sale and standard forms of contract, some of which are used very widely and have been translated into many languages, are considered by Governments and enterprises to have practical value in

facilitating international trade by simplifying the drawing up of contracts, by avoiding conflicts of laws between different national systems, by reducing misunderstandings and litigation, and by providing a balance between the interests of buyers and sellers.

The same purpose and in particular the bridging of different legal systems, has been served by the series of earlier guidelines drawn up by the Working Party (which was earlier designated as a Group of Experts) on International Contract Practices in Industry. In earlier years, the following guidelines were published: the Guide for use in drawing up contracts relating to the international transfer of know-how in the engineering industry (1970); the Guide on drawing up contracts for large industrial works (1973); the Guide for drawing up international contracts on industrial co-operation (1976); the Guide for drawing up international contracts between parties associated for the purpose of executing a specific project (1979); the Guide for drawing up international contracts on consulting engineering, including some related aspects of technical assistance (1983). The Guide for drawing up international contracts for services relating to maintenance, repair and operation of industrial and other works (1987).

Reaching an agreed choice of subject-matter sometimes proves difficult. The Guide whose preparation has begun recently, for example, deals with compensation trade. As is well-known, the practice of countertrade and compensation trade can give rise to controversy, especially in east-west commercial relations. Lengthy negotiations were needed before agreement was reached to the effect that the Guide on Joint Ventures and the Guide on Compensation Trade would be issued as separate parts of a multi-part Guide on new forms of industrial co-operation.

Once the subject matter has been agreed, the legal experts draw up a table of contents indicating the issues which the Guide should cover and instruct the secretariat to prepare a first draft. That draft is then reviewed in detail at a succession of bi-annual meetings and is approved for publication when the second reading of the revised text has been completed.

The process of revision takes the form of a multilateral dialogue in which differences of systemic, national and individual approaches have to be reconciled. This takes time, but a solution is always found — often by inviting the secretariat to put forward a compromise formulation which satisfies all participants.

The reasons for the choice of east-west joint ventures as the topic of the most recent Guide do not call for extended comment. The fact is that such joint enterprises are a relatively new form of east-west commercial relations raised to a potentially new and much larger scale by the decision of the Soviet authorities, less than two years ago, to

authorize the establishment of joint ventures on the territory of the USSR. Since the beginning of 1987, when the Soviet enabling legislation came into force, east-west joint ventures have been established at an accelerating pace.

While only a handful of east-west joint ventures were founded annually in the early 1980's, by 1987 the number of new joint ventures was already 91, and, during the first eight months of 1988, no less than 120 additional joint venture contracts were signed. At the present time there are approximately 290 registered joint ventures in the European member countries of the CMEA.

In these circumstances, there is a growing need amongst businessmen and lawyers in both east and west for information and guidelines on how to prepare themselves for joint venture negotiations, how to draw up the economic, technical and legal documents necessary for the approval of the joint venture by host country authorities, and how to run the operations of the common enterprise.

The Guide to be published next month aims at helping future joint venture parties to deal with the above-mentioned problems. The publication, which is entitled *East-West Joint Venture Contracts*, focusses on the issues arising in the establishment and operation of east-west joint ventures in those European member countries of the Council for Mutual Economic Assistance (CMEA) which now allow this form of industrial co-operation in their respective territories — namely, Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and the Soviet Union.

The Guide consists of three parts on only the first of which will a more detailed presentation be given today.

Part One first sets forth guidelines relative to the establishment and approval of joint ventures in the CMEA countries; after an introduction, this part deals with such matters as the initial feasibility study, host country objectives, taxation and incentives, double-taxation and investment protection treaties, the joint venture documentation, and approval and registration.

The bulk of Part One deals with the drawing up of the joint venture contract itself. In 22 sections, such matters are dealt with as the scope of the joint venture, planning and co-ordination, foreign trade rights and foreign currency transfers, accounting and auditing, incorporation, financing, facilities, organization and management, employees and conditions of employment, purchases and marketing, transfer of shares, termination and liquidation, applicable law, and settlement of disputes.

Throughout Part One illustrative references are made to the specific provisions of the joint venture regulations of the CMEA member countries. It is hoped that in this way the reader of the guidelines will

obtain a very precise and practical insight into the various aspects of east-west joint ventures.

Part Two supplements the illustrative references of Part One by reproducing the basic joint venture regulations of the CMEA member countries in their entirety. In this way, the user of the Guide will be able both to study the rules of a given country in more detail, and to compare the regulations of the various countries with one another.

At the practical level, when the negotiations on a specific joint venture project have advanced to a stage where the first drafts for the necessary documents have to be drawn up, the person responsible for preparing these documents, even after studying the available guidelines on contract drafting and the applicable host country regulations and international treaties, will, as a rule, look for a model, or models, of the type(s) of document(s) that he or she is going to prepare. Even in cases such as joint ventures — where no two projects are ever identical — these models are usually most helpful as basic materials from which the “tailor-made” documents for the specific case at hand can be more easily and more quickly elaborated.

It is for this purpose that *Part Three of East-West Joint Venture Contracts* contains some illustrative models of joint venture contracts and joint venture charters (articles of association). It is believed that these materials will further enhance the practical value and usefulness of the publication.

Copies of *East-West Joint Venture Contracts* (Sales n° E.88.II.E.30 ISBN 92 - 1 - 116437-0 at \$50 US per copy) can be ordered from UN Bookshop/Sales Unit, Palais des Nations, CH-1211 GENEVA 10, Switzerland or from Sales Section, United Nations, 10017 New York, United States.

## INTRODUCTION

### A. PURPOSE AND SCOPE OF THE GUIDE

This Guide deals with east-west joint ventures which are established and operate in the form of a registered company (juridical person), where the liability of each of the parties is limited to the amount of its contribution of the statutory capital (share capital) of the company.

The purpose of the Guide is to facilitate the drafting of east-west joint venture contracts by drawing attention to the main legal issues involved in this kind of transaction, and suggesting ways of resolving these issues, within the framework of the applicable law, in the joint venture documents.



While reflecting practical experience obtained both from east-west joint ventures operating in east European countries and from east-west joint ventures based in western Europe, this part of the Guide concentrates on east-west joint ventures located in the east European countries of the ECE region.

## B. REGULATION OF EAST-WEST JOINT VENTURES

Six east European countries of the ECE region have issued regulations concerning the establishment and operation, in their respective territories, of east-west joint ventures in company form.

In *Romania*, law N° 1 of 1971 authorized the formation of joint ventures by Romanian enterprises with foreign firms. This law was followed, in 1972, by two implementing decrees : Decree N° 424 on the constitution, organization and operation of joint companies ; and Decree N° 425 regarding tax on profits of joint companies. Decree N° 395 of 1976 refers, among other things, to duty-free imports of goods for use by joint ventures.

In *Hungary*, joint ventures were authorized in 1972 through Decree N° 28/1972(X.3)PM of the Minister of Finance on economic associations with foreign participation. This decree has subsequently been amended several times — namely in 1977, 1978, 1979, 1982 and 1985. Other regulations relevant to joint ventures in Hungary include Government Decree N° 47/1984(XII.2.1.) and Decrees N° 45/1984(XI.21) and N° 42/1985(XII.22), on Corporation Tax and Corporation Super-Tax, the Joint Bulletin N° 8001/1985(Tg.E.7)OT-PM-KkM on the scope of outstandingly important activities, and the joint Decree N° 62/1962(XI.16)PM-KkM on customs free zones.

In *Bulgaria*, joint ventures are regulated by Decree N° 535 of 1980 on economic co-operation between Bulgarian juridical persons and foreign juridical and physical persons. In 1987 certain amendments were made to the existing legislation through the Regulations on the economic activity of self-managing economic organizations with foreign investment participation in Bulgaria (Decree N° 31/1987), the Regulations on the procedures of supervision and control on self-managing economic organizations' economic activity carried out with foreign investment participation in Bulgaria (Decree 49/1987), and the Decree N° 2242 on free trade zones.

In *Poland*, the law of 23 April 1986 on companies with foreign capital participation laid down the rules which Polish and foreign entrepreneurs are to follow when carrying out joint economic activities on a large scale. This law had been preceded by earlier legislation regulating the establishment of firms in small industries (1976) and of

banks with foreign capital participation (1982). Amendments to the 1986 law will be introduced by mid-1988 in order to improve the conditions of operation of joint ventures.

In *Czechoslovakia*, the principles regarding the creation and activities of joint ventures in that country have not yet been codified. However, individual legal rules of the existing Czechoslovak legislation will be applicable to such joint ventures. Moreover, the Czechoslovak Chamber of Commerce and Industry has issued, in 1986, a document entitled *Joint Ventures in Czechoslovakia*, regulating various aspects of the creation and activities of joint ventures between Czechoslovak organizations and companies from non-socialist countries. Czechoslovakia is expected to issue codified rules on east-west joint ventures during the course of 1988.

In the *Soviet Union*, east-west joint ventures are regulated by three decrees of 1987. The first of these is the Decree of the Presidium of the USSR Supreme Soviet of 13 January 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. The second is the Decree of the USSR Council of Ministers of 13 January 1987 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 (Decree 49). On 17 September 1987, the USSR Council of Ministers issued the Decree on further measures on the carrying out of external economic activities in the new conditions of economic management (Decree 1704); this Decree amends the provisions of the two Decrees of 13 January 1987, regarding certain important matters. Subsequent to the Decrees of January 1987 the USSR Ministry of Finance and certain other government agencies have issued a number of orders and instructions regulating more in detail the operation of joint ventures in the Soviet Union.

In the Guide, references will be made, when appropriate, to the stipulations of the above-mentioned regulations in order to illustrate the approaches which the respective governments have adopted regarding the questions dealt with here.

It should be noted, however, that the respective legislations of the countries now reviewed do not cover all questions relating to the establishment and operation of joint ventures in their territories. For instance, not all these countries have corporate laws which would form the basic legal framework for a joint venture company. Such a framework must therefore be created through contractual arrangements between the parties. An express stipulation to this effect is included in the Polish joint venture law according to which persons establishing a company may freely arrange, in contracts and other founding documents of the company,

their mutual relations and the internal relations of the company, unless provision of the *Commercial Code* or the joint venture law state otherwise. Moreover, in some countries a number of regulations regarding domestic enterprises are not applicable to east-west joint ventures, which further broadens the area which should be covered by the parties' mutual agreements. All this makes it most important for the parties to regulate in great detail in their contracts the various aspects of their joint venture project.

### C. TERMINOLOGY

In the Guide the terms mentioned below have the following meanings :

*Company* means the corporate entity (juridical person) to be incorporated by the parties for the purpose of carrying out the agreed joint venture activities.

*Joint venture contract* means the agreement of the parties on the establishment of the company.

*Charter* means the statute of the company, agreed upon by the parties.

*Statutory capital* means the aggregate amount of the respective investments by the parties as tied-up capital of the company.

*Host country* means the east European country in which the company is incorporated.

*Local party* means the host country organization, firm or management body which is a party to the contract and/or to the preceding joint venture negotiations.

*Foreign party* means the natural or juridical person from a market economy country which is a party to the contract and/or to the preceding joint venture negotiations.

*Products* means the products by the company.

*Plant* means the industrial or other works where the products are manufactured.

### I. ISSUES RELATING TO ESTABLISHMENT AND APPROVAL

Setting up an east-west joint venture requires systematic and careful preparation. A multitude of different questions must be studied and analyzed by the parties, and a number of documents drafted. Finally, the joint venture project must be presented to the respective host country authorities for approval. In the following, an account is given of the main features of the preparatory work.

### A. INITIAL FEASIBILITY STUDY

In order for the parties to assess whether the projected joint venture would indeed satisfy their requirements and expectations, an initial feasibility study should be prepared at an early stage. The study would also serve the important function of indicating whether the project is in line with the objectives which the respective host country legislation stipulates for an east-west joint venture, and whether it would, accordingly, be approved by the relevant authorities of that country.

Each joint venture project sets its own premises for the initial feasibility study. Individual host countries may also have their own requirements or preferences in this respect. For example, under Bulgarian regulations it is advisable that a feasibility report contain the following informations.

- (i) data of the technical and technological standards of the envisaged production, services and other activities in comparison with the best world standards;
- (ii) analyses and forecasts on marketing, and data about the economic and foreign currency efficiency of the project, including its self-financing in foreign exchange and in Bulgarian currency;
- (iii) information on the existence of vacant buildings or premises that could be placed at the disposal of newly-formed joint ventures for manufacturing and administrative needs, and in the absence of such, information on the measures taken to secure quicker new construction;
- (iv) information on the kind, quantities and prices of raw and prime materials, fuels and energy sources required for the envisaged production, whether purchased locally or imported;
- (v) data about requirements of skilled manpower and its qualifications, and the planned measures to improve such qualifications.

### B. HOST COUNTRY LEGISLATION AND INTERGOVERNMENTAL TREATIES

Also the respective host country legislation dealing with the establishment and operation of joint ventures and applicable intergovernmental treaties should be carefully studied and analyzed.

In addition to providing a general orientation to the various legal aspects involved in the setting up of joint venture in the country in question, this kind of study is necessary in order to ascertain not only which principles are mandatory and which are optional, but also whether there are areas which are not regulated at all or only to a small degree.

Another reason for the need to study carefully local legislation is the possibility that certain rules which normally bind local enterprises in the host country are not applied to joint ventures with foreign participation. The parties may therefore wish to include in the joint venture documents provisions relevant to these matters.

The host country joint venture laws regulate a number of different problem areas.

### **1. Permitted activities**

Thus, several joint venture laws define the sectors in the national economy of the host country where east-west joint ventures may operate. As an example of a rather broad definition, the Romanian rule can be cited according to which joint ventures with foreign participation may be set up in the sectors of industry, agriculture, construction, tourism, transport, and scientific and technological research, with the object of producing and marketing material goods, performing services or carrying out work. A narrower field of activities is stipulated by the Czechoslovak rules, which provide that east-west joint ventures are possible only in the fields of industrial production and tourism.

### **2. Host country objectives**

Most of the joint venture laws set forth some general objectives which the company should promote. By way of illustration, under the Soviet rules, the purpose of the company should be to satisfy more fully the domestic requirements for certain types of manufactured products, raw materials and foodstuffs; to attract advanced foreign equipment and technologies, management expertise and additional material and financial resources to the USSR national economy; to expand the national export sector and to reduce superfluous imports. In addition to enunciating some of the objectives just mentioned, the Bulgarian rules set forth the requirement of raising the scientific-technical level of production and its efficiency and the quality of the output, the Polish law makes special reference to the export of services, and the Romanian law to the promotion and development of scientific research activities. In this connection special mention should be made of the Romanian requirements that the products of the company should be particularly intended for export and that the company shall conduct all of its operations in convertible currency.

### 3. Taxation and incentives

#### *a) General principles and the role of the treaties for the avoidance of double taxation*

The applicable income tax rates vary considerably, 20 per cent in Bulgaria, 30 per cent in Romania and the Soviet Union, 40 per cent in Hungary, and 50 per cent in Poland and Czechoslovakia. In three countries a withholding tax is levied on profits transferred abroad; in Romania and Bulgaria the applicable rate is 10 per cent, in the Soviet Union 20 per cent. Under Czechoslovak regulations a 25 per cent tax is levied on profits irrespective of whether it is transferred abroad or not.

#### *b) Automatic exemptions and reductions in income tax*

They are granted in Poland and the Soviet Union. In Hungary they are accorded only to specific activities.

#### *c) Case-by-case exemptions and reductions in income tax*

Four countries offer incentives which are not automatic, but are applied for in each individual case. In Hungary and in the Soviet Union case-by-case reductions or exemptions are possible over and above the automatic incentives described above, whereas in Romania and Bulgaria these are the only incentives available; in Romania a joint venture may obtain a total tax exemption for its first profitable year and a 15–30 per cent tax rate for the following two years; under Bulgarian law, during the first three years, a reduction in the basic 30 per cent income tax can be negotiated on a yearly basis.

#### *d) Other incentives*

Most of the countries provide for exemptions in customs duties for goods which are imported for uses which are connected with the operation of the joint venture.

### 4. Investment protection

Several joint venture laws contain provisions regarding the protection of the parties' investments in the joint venture company

against certain kinds of risks. Some of these provisions are unilateral undertakings by the respective parties obtaining certain guarantees from a third party, normally the host country central bank. Also the intergovernmental treaties on investment protection which some of the host countries have concluded with western governments deal with the most obvious risks involved in a foreign investment. In the Guide some of these risks, and the ways in which protection against them can be arranged, are briefly discussed.

*a) Protection against expropriation  
and similar measures*

One of the risks which might be associated with a foreign investment is that the property of the investor is for one reason or another expropriated or confiscated by the host government. This question is addressed in some joint venture laws.

Thus, the Soviet law stipulates that the property rights of a joint venture shall be protected under Soviet legislation protecting state-owned Soviet organizations, that the property of a joint venture shall not be requisitioned or confiscated by administrative means, and that the property of a joint venture can be seized (for the payment of its debts) only upon a decision of an organ which has, under USSR legislation, jurisdiction over disputes involving joint ventures. Similarly, under Bulgarian law, the property provided by the foreign party in the joint venture is exempted from administrative seizure or confiscation.

*b) Transfer of profits  
and return of investment*

Some joint venture laws contain express provisions relative to the foreign partner's right to transfer abroad the profits the joint venture distributes. According to Polish law, the foreign partner has the right to transfer abroad such profits without a separate foreign exchange permit. The Soviet joint venture decree provides that foreign partners are guaranteed that amounts due to them as their share in distributed profits are transferable abroad in foreign currency; they have also the right to return, upon liquidation of the joint venture, their contribution, in money or in kind. According to the Romanian joint venture law the Romanian State vouches for the transfer abroad of not only the profits made, but also of the value of share quotas transferred to the Romanian party, and of dues resulting from the distribution of assets following upon a dissolution and winding up, and also of other dues, under the conditions stipulated in the joint venture contract or charter.

Here also, international investment protection treaties can provide further guarantees to foreign partners. Thus, for example, the above mentioned treaty between the Federal Republic of Germany and Hungary stipulates that each contracting state guarantees to the investor from the other contracting state the free transfer of all payments emerging from the investment; in practice this means that the host country will make available the currency needed for the transfer also in the case that the respective company produces only for domestic markets and has therefore no foreign currency reserves of its own. In this respect the treaty between the Federal Republic of Germany and Bulgaria reflects a narrower approach. With regard to payments made from Bulgaria the principle of free transferability means that the payments shall be made from the joint venture's own currency account. If the joint venture's currency reserves are insufficient, then the Bulgarian National Bank will make available the necessary funds; however, with regard to dividends and interests such funds will be provided only if the joint venture is engaged, with the permission of respective Bulgarian authorities, in an activity where its earnings are realized entirely or partly in domestic currency.

### C. RULES OF COMPETITION

When preparing for the joint venture, the parties should also take into account the national and international rules of competition which might be applicable to their planned activities. Below, a short account is given of the main problem areas which might be considered in this connection.

A breach of the rules of competition may result from the obligation of the joint venture company to formulate its marketing strategies (pricing, scope of the market) exclusively in view of the possible consequences of that strategy for the joint venture parties. Such a situation could arise if a joint venture is established for the purpose of enlarging the market share of the joint venture parties or one of them, or to develop a series of products which are similar to those which the parties already sell.

The use, by the joint venture company and one of the parties, of common personnel, might involve an increased risk of violating the rules of competition in the case that this arrangement will contribute to making the activities of the joint venture company dependent on the commercial strategy of one of the parties.

A joint venture company may be established with a view of providing the partners with a secure source of supplies, or of marketing their products. The refusal by the joint venture company to enter into commercial relations with other parties than the joint venture partners,



or to deal with such other parties with other than less favorable conditions than those applied to the joint venture partners, could also constitute a violation of the rules of competition. If a joint venture is in a monopoly position such a violation would be particularly sensible, since this kind of behaviour will result in the exclusion from the respective market of other companies.

In a joint venture project, one of the parties may agree to transfer some of its technology to the joint venture. In such a case, a licensing contract might stipulate that the use of patents or know-how will be subject to a number of conditions relative to duration or territory. These restrictions can be anti-competitive if they are permanent and cannot be justified by the objectives for which the joint venture was established.

The exploitation of the results of the research and development work carried out by the joint venture could have anti-competitive implications if the competitors of the joint venture partners are excluded from availing themselves of the results of the research. That could also be the case when the object of the joint venture is research alone. There is a danger that third parties will be excluded, if the exploitation of the results is carried out by joint venture partners which have a substantial share of the market for the product which is manufactured with the help of the results of the research work.

In the event that the joint venture products are similar to those manufactured by one or the other of the parties, the latter can agree on territorial restrictions for the sale of the joint venture products, or on the exclusive distribution of the products through the marketing network of one of the parties. These marketing agreements may involve violations of the rules of competition if they, in fact, prevent the competitors of a joint venture party from buying the products of the joint venture company.

#### **D. THE DOCUMENTATION**

If the feasibility study and the study on the respective host country regulations and rules of competition lead the parties to an understanding that there is a common long-term interest for a mutually advantageous joint venture, full-scale negotiations can begin. At this point, the parties may wish to form various working groups to carry out some parts of the negotiations.

As of this stage, a number of documents on the economic, technical and legal aspects of the project will have to be prepared to enable the parties to come to a final understanding. Many of these documents will subsequently be submitted to the relevant authorities together with the application for the final approval of the project.

## 1. Economic and technical documentation

## 2. Legal documentation

The legal documents which may be prepared in view of the joint venture project can be divided into three groups as follows :

### *a) Pre-foundation documents*

Already during the negotiation stage the parties may wish to prepare and sign certain legal documents, such as :

- (i) Letters of intent or protocols : These documents are normally used to record the steps which have so far been taken by the parties relative to the project under negotiation, and possibly to agree on the measures still to be taken by them in view of facilitating further negotiations. As a rule, when the parties prepare and sign these kinds of documents they do not intend to commit themselves to agreeing subsequently to the project, and they are well advised not to use therein any language which could be interpreted as such a commitment.
- (ii) Non-disclosure agreements, agreements on non-competition : These documents are principally aimed at protecting the interests of the parties in the event that they disclose to their negotiating partners technical know-how, business data, or any other information which the disclosing party wishes to be kept secret. These agreements are intended to remain binding — usually for a number of years — even if no contract is concluded relative to the project under negotiation.

### *b) Foundation documents*

These documents can include :

- (i) The joint venture contract, and
- (ii) The charter.

The requirement that foundation documents include both the joint venture contract and the charter is contained, for example, in the Romanian joint venture decree. With regard to both of these documents the decree contains a list of the questions which must be regulated therein. On the other hand, the parties can include, both in the joint venture contract and in the charter, any other provisions which they wish to agree on. This latter principle is set forth also in the Soviet joint

venture decree at the end of the list of the items which the charter must contain (no requirements are stated with regard to the joint venture contract).

It should be noticed, however, that not all joint venture laws require the use of two separate foundation documents. Thus, under Bulgarian law, only one document, the contract of constitution, is to be drawn up. The contract of constitution is also the charter of the company. Also in Poland the parties may agree to use only one foundation document.

When negotiating the structure and contents of the joint venture documentation, the parties should therefore take into account the provisions of the host country legislation in the area, and, if both a joint venture contract and a charter are to be drawn up, agree within the framework of the stipulations of the applicable law on what provisions will be included in the charter and what will be left to be agreed in the joint venture contract or any other agreements which will be concluded for the realization of the joint venture objectives.

While agreeing on this question the parties should also take into account that the legal rules which will apply in the event that the parties would subsequently wish to alter some of the agreed provisions, may be different depending on whether the said provision is included in the charter, in the joint venture contract or in some other agreements. A change in the joint venture contract will, as a rule, require the consent of all the parties which have signed it, while a change in the charter provisions may be possible by majority, or qualified majority, vote.

### *c) Auxiliary documents*

Auxiliary documents can be contracts which the joint venture company concludes with :

- (i) One of the joint venture parties. These can include
  - Contracts of *sale* or *purchase*, whereby the joint venture either sells to a party products produced by it, or purchases from a party machinery, equipment, raw materials, components, energy, electricity, etc., necessary in its own production;
  - *Licence* contracts, whereby the joint venture acquires the right to use a partner's patents, know-how or trademark;
  - Contracts for *services*, such as installation or supervision of installation, technical assistance, training, or management;or
- (ii) Other entities abroad or in the host country. These contracts can deal with the same subjects as those mentioned above.
- (iii) Employees of the joint venture company.

This part of the Guide will deal principally with the drawing up of the joint venture contract but references will also be made to matters which may be dealt with in other documents.

## **E. APPROVAL AND REGISTRATION**

In all the socialist countries of eastern Europe the parties wishing to establish an east-west joint venture must obtain the approval of appropriate authorities for the joint venture project, and include in the application relevant supporting documentation. In some countries, co-ordination with the authorities will be necessary already before the required documents for approval are submitted.

### **1. Pre-application co-ordination**

This kind of co-ordination is required in Bulgaria and Hungary. Thus for example, under Hungarian law, if a local party wishes to establish a joint venture with a foreign party, and an agreement in principle has been reached in the course of the preparatory negotiations, such local party shall provide the Ministry of Finance with a report on the starting of substantive negotiations aimed at the conclusion of the joint venture contract. The report shall set forth a number of details relative to the joint venture project. Upon submission of the report the negotiations may be continued. The Ministry of Finance must make its comments and communicate its standpoint, if any, with 30 days of the receipt of the report.

### **2. Documentation**

The requirements concerning the documentation to be submitted vary from country to country.

The joint venture regulations of most of the countries contain rather general stipulations in this respect. Broadly speaking, two sets of documents are mentioned : (i) a feasibility study (or studies) on the technical and economic aspects of the project, and (ii) foundation documents, which usually include the joint venture contract and the charter.

### **3. Registration**

Under the joint venture regulations of all of the countries now concerned, the company must be registered with the authority prescribed

by the law. Such registration has constitutive effect — that is to say, the company shall become a legal entity through the registration, and at the time when the registration takes place.

The practical meaning and effect of the registration can be illustrated by some provisions of the USSR Ministry of Finance Regulations concerning the registration of joint ventures. According to these provisions Soviet state-owned, co-operative and other public enterprises and economic organizations are prohibited from entering into any transactions or contracts with joint ventures prior to their registration; Soviet banks may open accounts for joint ventures, make monies available to them, and carry out crediting and payment operations with them only after they have been duly registered.

Under Soviet law, a certificate of registration is issued to a registered joint venture. On the basis of the certificate, the joint ventures must publish a notice on its establishment. The information entered into the joint venture register and published accordingly shall be regarded as known to third parties, and no dispute concerning the issue will be considered by the USSR Ministry of Finance.

The Bulgarian regulations on the registration of joint ventures stipulates that the following information shall be inscribed in the register; the name, seat and address of the joint venture; the name of the persons representing the joint venture, and the extent of their rights of representation; the number and date of the decision by which the registration is decreed. The Bulgarian register for joint ventures is public, and the Bulgarian Chamber of Commerce and Industry issues certified copies or certificates for particulars entered in the register.

## II. THE JOINT VENTURE CONTRACT

### A. THE SCOPE AND OBJECTIVE OF THE JOINT VENTURE

The joint venture contract should define the scope of the business activities in which the company is to engage.

In view of the fact that any changes in the agreed objectives of the joint venture may have to be approved by the host country authorities, it may be advisable to agree on a very broad definition of the objectives, including therein all such activities which the parties might, even at a later stage, wish to embark on. If this is done, however, either party may wish to include in the joint venture contract a provision to the effect that starting some of these activities requires mutual agreement by both parties.

## **B. IMPLEMENTATION SCHEDULE**

In order to provide for an orderly implementation of the necessary investments the parties should include in the joint venture contract a time schedule which sets out the dates by which the various measures must be undertaken and completed.

## **C. PLANNING AND CO-ORDINATION**

The parties may wish to include in the joint venture contract provisions setting forth some of the basic business policies under which the company is to be operated. Here, also, the respective host country regulations should be taken into account.

### **1. Internal business planning**

The joint venture contract should also lay down the basic principles regarding the planning of business operations of the company. As an example of issues which can become the subject matter of internal business planning, reference can be made to decisions which have to be co-ordinated between a Bulgarian joint venture and respective Bulgarian authorities — that is, decisions concerning prices, the quality of output, depreciation costs, etc. Systematic planning is likely to be required in the area of purchases of raw materials and components, and sub-contracting, as well as travel abroad. Planning requirements may also emerge, say, from taxation. Thus, for example, under the USSR Ministry of Finance regulations on the taxation of joint ventures, the amounts of advance tax payments for a current year will be determined by the joint venture itself on the basis of its financial plan for that year.

### **2. Co-ordination with host authorities**

Although joint ventures established in socialist countries do not receive production assignments from planning authorities, they will in practice have to co-ordinate their activities with the functioning of the host country.

In some countries such co-ordination is not merely a matter of necessary and useful practice, but a requirement prescribed by law. Thus, for example, under Bulgarian law a joint venture company must co-ordinate its decisions with the respective Bulgarian authorities regarding prices, the quality of output, depreciation costs and many other questions emerging in its daily economic activity.

For these reasons, the parties should carefully study the requirements set by host country legislation and practice regarding the co-ordination of the company's activities with the relevant authorities.

#### **D. FOREIGN TRADE RIGHTS AND FOREIGN CURRENCY TRANSFERS**

##### **1. Foreign trade rights**

The parties should specify in the joint venture contract whether or not the company will be engaged in foreign trade activities — that is, whether the company itself will import the raw materials, components, production equipment, etc., it needs to carry out its activities and/or export the products or services it produces. In three of the countries now in question — namely, Bulgaria, Poland and Czechoslovakia — if it is the intention of the parties that foreign trade will be part of the planned joint venture's business, appropriate steps should be taken before finalizing the joint venture contract, to obtain a foreign trade licence from the host country authorities.

##### **2. Foreign currency rules**

The basic rules regarding foreign currency transfers are contained in the host country legislation. However, under the joint venture laws of certain countries, more specific provisions regarding the implementation of these rules can be included in the joint venture establishment permit (Poland) or in the foreign currency permit (Czechoslovakia) which the joint venture must obtain.

On the other hand, under the laws of Hungary and Romania, the parties should specify in the joint venture contract the currency in which transfers will be made to the foreign partner.

#### **E. ACCOUNTING AND AUDITING**

In all the countries under review the joint venture laws contain rules dealing with accounting. Often room is left for the parties to agree on issues considered important.

##### **General Principles**

Regarding the general principles of accounting, the Czechoslovak regulations provide that, in principle, accounting is governed by the rules

applicable to Czechoslovak organizations, and that exceptions, if necessary, can be granted by the Ministry of Finance. The Polish joint venture law stipulates that the general principles of accounting for joint ventures will be laid down by the Ministry of Finance.

The Soviet joint venture decree stipulates that joint ventures shall maintain business, book-keeping and statistical accounting in accordance with the standards established in the USSR for state-owned Soviet enterprises. The forms of such accounting and book-keeping have been jointly specified by the USSR Ministry of Finance and the USSR State Committee for Statistics (GOSKOMSTAT, former USSR Central Board of Statistics).

Under this section of the Guide the following matters are also treated : depreciation rates; funds; auditing.

## F. INCORPORATION

### **Practical steps**

The joint venture contract should indicate which of the parties will be responsible for the incorporation of the company. The local partner being usually in the best position to organize the incorporation, he will often be assigned this task, but the parties may wish, for specific reasons, to adopt some other way of proceeding in this matter.

## G. STATUTORY CAPITAL AND CAPITAL CONTRIBUTIONS

### **1. Minimum capitalization**

The Hungarian legislation requires a minimum capitalization of 50 000 forints. Official documents emphasize, however, that when calculations show that a given joint venture will need a larger capital, the larger amount must be available before the foundation permit is granted.

The regulations in five other countries do not impose any lower limits on capitalization.

### **2. Parties' shares of the statutory capital**

All the joint venture regulations considered here contain provisions related to the ratio between the domestic partner's and the foreign partner's shares of the statutory capital of the company.

In three countries — namely, Czechoslovakia, Romania and the Soviet Union, the domestic partner's share may not be lower than 51



per cent and, consequently, the foreign partner's share not higher than 49 per cent. In the three remaining countries, on the other hand, foreign ownership above 49 is possible. In Bulgaria the joint venture decree expressly states that foreign participation may exceed 50 per cent. In Hungary exemptions to the 49 per cent rule may be granted in the fields of tourism, finance or services and, in specially warranted cases, also in other fields. In Poland exemptions are possible in economically justified cases which are not contrary to State security.

Depending on the company form used, also the form of the parties' ownership in the company may vary. Thus, the ownership may be in the form of a partnership interest, without any share certificates being issued, or it may indeed be in the form of owning a given number of shares, evidenced by share certificates issued to the owner, or in yet another form.

Once the parties have agreed on the size of the statutory capital and on the ownership ratios, they should introduce the respective provisions in the foundation documents. Thus, they should indicate the total amount of the statutory capital and the way in which it is broken down into individual partnership interests or shares. If there are different classes of ownership interests and shares, this should be indicated as well as the differences, if any, which exist between such different classes (for example, different voting rights).

### **3. Cash payments**

The parties should agree in the joint venture contract on the manner in which cash payments for the ownership interests or shares are made. Normally they are made on bank account to be opened specifically for this purpose. The joint venture contract should stipulate who will be responsible for opening such an account for the company.

It may be that not all of the moneys due as cash payments from the parties are needed at once. If this is the case, the parties may wish to agree in the joint venture contract that only part of the payments will be made at, or upon, the signing of the joint venture contract, and that the balance will be paid later, in accordance with the company's capital requirements. The joint venture contract should state clearly by whom the remaining payments will be called in, and within what time period from the call the respective payments should be made.

### **4. Non-cash contributions**

In most countries either company law or joint venture legislation expressly allows payments for share subscriptions to be made also in

forms other than cash — that is, in kind, in services, in industrial property rights, etc. Often the law which permits these other forms contains stipulations on how these contributions will be assessed.

Therefore, if the parties agree that a part of the capital contributions will be made in forms other than cash, the joint venture contract should describe, and indicate the value of, each such contribution. The documentation which substantiates the indicated values of the contributions should be referred to in the joint venture contract, and, where appropriate, appended thereto.

## H. FINANCING

### 1. Financing plan

The joint venture contract should define how, over and above the statutory capital, the setting up of the joint venture and the carrying out of its operation will be financed. This could be done in the form of a financing plan. When drawing up the financing plan the applicable host country regulations should be taken into account.

### 2. Sources of financing

The Guide discusses under this heading the provisions relating to the raising of credits in national and foreign currencies in the east European countries.

## I. FACILITIES

### 1. Local legislation

Before agreeing on the details concerning the facilities which the company will need in order to carry out its activities, the parties should get acquainted with the applicable host country regulations. These may affect the way in which the agreement will be conceived.

Thus, for instance, under Bulgarian law a joint venture cannot own in that country real property, or a building, for its operations. Other arrangements must therefore be made to secure the facilities. The Bulgarian party might make them available either free of charge or against agreed compensation, or they might be rented from outside. In the latter case local authorities are under the obligation to lease out, from state real estate reserves, the buildings and premises required for both the operation of the company, and the housing of the company's foreign employees and their families.

## **2. Description of facilities**

The parties should agree in the joint venture contract on the requirements concerning the joint venture facilities. In the case of a production plant, the contract might define — in an appendix, if necessary — the production capacity of the plant and the margins for the increase of the capacity, the needed equipment, machinery, instruments, commissioning equipment and spares, and other items necessary in the production. The preliminary plant and equipment layout, corresponding to the general description of the plant, might also be appended to the joint venture contract; the contract might also stipulate by whom and within what time the preliminary layout will subsequently be developed to a final layout.

## **3. Plant building**

When appropriate, the joint venture contract might also define the terms and conditions concerning the construction or leasing, as the case may be, of the building where the plant is going to be installed. The contract should further state who shall take care of the necessary practical steps to have the building constructed or leased, and within what time limits.

## **4. Other services**

In order to bring the facilities of the company to operative state it may be necessary that the parties render the company some services other than those mentioned above, such as assistance with respect to the procurement and installation of the necessary machinery and equipment, commissioning of the plant, etc. If this is the case, the parties should include in the joint venture contract the relevant provisions to this effect.

## **5. Terms and conditions**

The joint venture contract should clearly specify whether the services of the parties shall be rendered without or against compensation and, in the latter case, what terms will be applicable. When appropriate, the parties might attach to the joint venture contract specific conditions applicable to such services.

## J. PRODUCTS

It may be useful and even necessary to specify in a separate section the products to be produced by the company. This is particularly so in cases where the company is to operate in the field of manufacture of high-technology products, or of products using such technology which is — or can be — applied by the party from whom the technology originates, in the production of products other than those designated for the joint venture. The Guide discusses this kind of situation.

### **Product quality**

Since it should be the aim of the joint venture that its products be competitive in the national and international market, the parties may wish to agree in the joint venture or licence contract on certain basic principles regarding the quality of the products. If the products are based on the technology of one of the parties, and if this party manufactures similar or corresponding products, the contract could stipulate, for example, that the composition, specifications, performance, durability and finishing of the joint venture products should correspond to those of the products manufactured by the said party.

If the parties consider that, in order to ensure that the desired quality level is reached and maintained, an expert or specialist (or several of them) from the personnel of either of the parties should occupy, at least for a certain initial period, a given key post (or a number of key posts) in the production or quality control management of the company, stipulations to this effect could be inserted in that section of the joint venture contract which deals with the personnel of the company.

The parties may also wish to agree in the joint venture or licence contract on the procedure to be applied in the event that the quality of the products manufactured by the company does not meet the agreed standards.

## K. ORGANIZATION AND MANAGEMENT

### **1. Organizational structure**

A central issue which the parties will have to regulate is the organization of the company. This involves agreement not only on the composition and/or functioning of the statutory organs of the company but also on the operational structure of the company, on the functions and responsibilities of its various divisions and units, and on the allocation to these various departments of the human resources which will be available to the joint venture.

The agreement of the parties on these details should be documented in the joint venture contract. The agreed structure could also be illustrated by an organizational chart. The joint venture contract could further set forth the conditions under which the organizational structure can be modified.

## **2. Statutory organs and their internal relations**

The rules regarding the statutory organs of joint venture companies are stated, depending on the jurisdiction in question, either in the general company legislation of the country of incorporation or in the specific regulations concerning joint ventures with foreign participation, or in both. By and large, under the joint venture regulations of the various countries now reviewed the structure of the management organs of joint venture companies is similar to that of western corporations. In a joint venture company, there are normally two managing bodies, one being the highest decision-making organ, the other being responsible for the day-to-day management of the company.

In Hungary, the highest organ is called the Shareholders' Meeting (in Limited Liability Companies), or the General Assembly (Public Limited Companies), in Romania the General Assembly of Shareholders, in Poland the Assembly of Partners, in Bulgaria the Management Board, and in the Soviet Union the Board.

An important aspect of the division of powers and responsibilities between the various company organs is the question of control of the activities of the different organs by other organs, and the principles concerning the collective and individual liabilities of the members of the organs, for the activities they have undertaken as such members. Here, also, the parties should have a clear picture of the environment in which they are to operate, and, to the extent necessary and permitted by that country regulations, agree upon these matters in the company charter.

## **3. Composition and election**

In a number of countries, the relevant legislation contains mandatory rules according to which a minimum proportion of the members of given company organs must be nationals of the host country and/or that certain posts, such as that of the chairman of the board of directors or the managing director can be occupied only by such nationals.

#### **4. Quorum and manner of acting**

Regarding the manner of acting, under Bulgarian law, all decisions in the two management organs of the joint venture must be made unanimously. The Soviet joint venture decree stipulates that the parties must define in the charter of the joint venture company the questions on which unanimous decisions are required. The joint venture regulations of the other CMEA countries are silent on this point, and it would seem that a requirement of unanimity can be included in the charter, if the parties so wish.

### **L. EMPLOYEES AND CONDITIONS OF EMPLOYMENT**

#### **1. Qualifications**

It may be in the interest of the joint venture project — particularly in cases where the joint venture uses advanced know-how and production technologies or deals with products whose sale involves sophisticated marketing techniques — that the parties stipulate not only the composition and functioning of the statutory organs of the company but agree also on the qualifications which must be met by the occupants of given posts elsewhere in the organization.

Thus it may be useful to incorporate in the joint venture contract as an appendix the work description of, and qualifications required from, all the executive officers and other key persons of the company. In cases where staff at a lower level should meet particular technical or other requirements these should also be specified in the joint venture contract.

#### **2. Recruitment**

#### **3. Use of foreign employees**

If certain posts are to be occupied by persons originating in the organization of one of the other party, the joint venture contract should specify these posts and indicate whether they shall be manned in the agreed way permanently or for a limited period only.

#### **4. Conditions of employment**

The joint venture contract should contain sufficiently detailed provisions concerning the specific conditions of the employment contracts

of the individual employees of the company. Also regarding these matters the joint venture laws contain certain provisions.

In three of the countries, namely Romania, Bulgaria and the Soviet Union, different basic rules apply to labour relations with employees who are nationals of the host country, on the one hand, and foreign employees, on the other.

Thus, so far as national employees are concerned, the Bulgarian joint venture law simply states that the labour relations of Bulgarian citizens are governed by Bulgarian law. The Romanian law stipulates that Romanian personnel shall enjoy the rights and obligations provided by the legislation in force for the personnel of state enterprises. Under Soviet law, the pay and work conditions of Soviet employees shall be regulated by Soviet legislation.

As to foreign employees, under Bulgarian law labour relations with them are settled in the joint venture contract and the individual employment contracts. In Romania the rights and obligations of foreign personnel shall be established by the Board of Directors, or the Managing Committee, as the case may be. The Soviet joint venture decree stipulates that Soviet law shall apply also to foreign citizens, except for matters of pay, leave and pensions which are regulated in the contract signed with each foreign employee.

The Hungarian joint venture law stipulates, without making a distinction between domestic and foreign employees, that wage-fixing for the employees of the joint venture shall be governed by the joint venture memorandum of association and the contracts of employment, as provided for in the joint venture company's statutes and the approval of the joint venture. Similarly, the Polish law stipulates that the joint venture company's salary system should be set out in the contract or other founding documents of the company, or by the decisions of its organs. In Poland the managers of the joint venture company have full autonomy in devising the remuneration systems of the company. The Czechoslovak rules state that the remunerations of persons employed with joint ventures will be governed by Czechoslovak legal rules; deviations, if necessary, will be allowed by the Federal Ministry of Labour and Social Matters.

## M. PURCHASES AND MARKETING

### 1. Purchases

Several joint venture laws contain provisions regarding the purchase of raw materials, components, etc., necessary for the operations of the joint venture. In this respect, a distinction must be made between

the purchases necessary for the joint venture operations which are made in the host country, on the one hand, and purchases from abroad, on the other.

*a) Domestic purchases*

The joint venture contract should specify the manner in which the necessary raw materials, components, etc., will be purchased within the framework of host country legislation. When applicable, the contract should also include stipulations regarding the supply of water, electric power and other basic factors of production to the company. When finalizing their agreement in this respect, the parties may have to approach host country authorities in order to have their assent to the arrangements, and to have the appropriate provision included in the establishment permit.

*b) Purchases from abroad*

Purchases from abroad in convertible currencies are admitted only if the funds used originate venture's own resources.

## **2. Marketing**

*Domestic marketing*

With regard to domestic sales the Hungarian joint venture law stipulates that the joint venture — with the exception of joint ventures selling directly to the public at large — may sell products intended for domestic consumption only to wholesale trade enterprises and to enterprises trading with the means of production (exemptions to this rule may be granted at the founding stage of the joint venture). In the Soviet Union, joint ventures can agree with Soviet enterprises and organizations on the currency to be used and on the manner in which sales are to be realized on the domestic market.

## **N. TRANSFER OF SHARES**

Under this heading the Guide discusses the provisions which the joint venture contract ought usefully include to deal with : approval by authorities; consent by other shareholders or by the company; transfer of shares and the joint venture contract.



## O. TERMINATION AND LIQUIDATION

### 1. Statutory and agreed grounds for termination

Three of the joint venture laws now reviewed, namely those of Hungary, Romania and the Soviet Union, expressly mention that a joint venture can be wound up also on the basis of the provisions included in the foundation documents of the company. Hungarian law also refers more generally to the agreement of the parties in this matter, as does the Bulgarian law, too. The Czechoslovak and Polish regulations do not contain any provisions in this respect.

The parties should therefore include in the charter (or the corresponding founding document) provisions regarding the agreed grounds for termination. The provisions should also define the corporate organ which takes the decision, and the manner in which a decision on the termination is to be made (unanimity or qualified majority).

### 2. Liquidation

Some joint venture laws include provisions regarding the liquidation of the company's assets in the case of winding up.

## P. APPLICABLE LAW

With regard to applicable law, four different groups of legal relationships can be distinguished in an international joint venture — namely, those between the joint venture parties, those between the company and one of the parties, those between the company and outside third parties, and those between the company and its employees. With regard to all of those relationships, the question of the applicable law should be examined and, when appropriate, agreed upon between the parties concerned.

Some of the joint venture regulations now reviewed contain express references to the general application of host country legislation to the relations between the parties. Such a reference can be found in the Czechoslovak principles and in the Soviet joint venture decree. Under Polish law, the parties may freely arrange their mutual relations, unless provisions of the Polish Commercial Code on the joint venture law states otherwise.

None of the joint venture regulations provides for the law applicable to the contracts which the joint venture company might conclude with one of the joint venture partners. It seems therefore possible to agree freely on the law applicable to such contracts.

## Q. SETTLEMENT OF DISPUTES

### 1. Amicable settlement

With regard to disputes between the joint venture parties, in the joint venture contract a number of different mechanisms can be devised to help to settle differences in a constructive way at an early stage, before they have deteriorated to a conflict which could be solved only through formal proceedings.

### 2. Settlement in arbitration or through general courts of law

As to the relationship between the joint venture parties, under the Soviet joint venture decree, disputes among partners in a joint venture over matters related to its activities are settled either by the USSR courts, or, by common consent of both sides, by an arbitration tribunal. The Bulgarian joint venture decree states that questions which are not regulated by the decree or the joint venture contract are to be settled through arbitration. Other joint venture laws do not contain express provision regarding disputes between the parties.