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## Aspects of Soviet Law on Joint Ventures, Foreign Trade, and Investment: A Bibliographic Survey of Current Literature in English

Igor L. Kavass

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# Aspects of Soviet Law on Joint Ventures, Foreign Trade, and Investment: A Bibliographic Survey of Current Literature in English

Igor I. Kavass\*

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## I. INTRODUCTION

The following is a compilation of works from widely dispersed sources in legal, economic, and business literature, including significant pronouncements made by professors, practicing lawyers, business people, and students. Journal articles are the predominant genre, and we have found it expedient to organize the gamut of views represented therein into several sections. With the growing consolidation and maturity of joint venture practices, the trend in publication is moving towards monographs, legislative compilations, practice manuals, and lengthy theoretical works. They appear to be phasing out articles from their place at the forefront of research.

All the same, the reader eventually will discover the skeletal nature of even the most earnest investigations of the legal creature known as the joint venture. Clearly, significant strides in comprehensive information on operating a joint venture are tagged to developments in Soviet law pertaining to enterprises. Recent legislation on "small enterprises," Soviet-press musings on "joint-stock companies," and plans to privatize some State enterprises in connection with Gorbachev's economic overhaul program all represent strands of a more organized and law-based approach to operating businesses. Any great leap forward in joint venture studies at this juncture depends first and foremost on reforms yet to be put on line in the USSR.

## II. JOINT VENTURES

A. *Collections and Summaries of Joint Venture Laws*

Carey, Sarah C., *The Process of Negotiating a Joint Venture in the USSR: Questions Resolved and Unresolved*, 10 INT'L Q. 45 (1989).

A brief description of the 1987 joint venture legislation.

Cohen, J.A., *A China-Watcher's Impressions of the Soviet Enterprise Legislation*, in LAW AFTER REVOLUTION 163 (W. Butler ed. 1988) (Dobbs Ferry, NY: Oceana Publications, Inc.).

EASTERN EUROPE AND THE USSR: A GUIDE TO FOREIGN INVESTMENT LEGISLATION (2d ed. 1990) (Amsterdam: KPMB, 18 pp.).

This compilation contains brief summaries of foreign investment laws in Eastern Europe and the USSR in effect on January 1, 1990. Convenient as a given reference source. The USSR section summarizes in three pages the gist of the joint venture legislation of 1987 and some subsequent developments.

FITZPATRICK, PETER B., *TRANSNATIONAL JOINT VENTURES* (1989) (Chesterland, OH: Business Laws, Inc.).

This book contains several contributions on joint ventures in the Soviet Union including:

*Soviet Joint Venture Legislation and Regulation, and Recent Related Legal Development* by James A. Dobkin and Jeffrey A. Burt;

*The Soviet Joint Venture Law* by Keith M. Dunn; and

*Technology Transfer Transaction in the USSR—Practical Experience of U.S.A. Companies* by Thomas L. Shillinglaw.

GUIDE TO JOINT VENTURES IN THE USSR (1988) (Paris: I.C.C. Publishing S.A., 279 pp.).

Compiled jointly by a task force of the International Chamber of Commerce and the USSR Chamber of Commerce and Industry, this publication contains the full texts in English and Russian of the major decrees, regulations, and other legislative materials on joint ventures and foreign trade organizations enacted in the Soviet Union from January 13 through November 30, 1987. The legislative texts are preceded by a short introduction with useful practical information. There is also a collection of model documents, standard forms, and helpful checklists, as well as lists of addresses, other practical information, and a glossary of relevant terms. The work offers a helpful collection of primary legislative source materials for Western businesspeople and investors, as well as their attorneys.

Hober, Kaj., *Joint Enterprises in the Soviet Union*, in *YEARBOOK ON SOCIALIST LEGAL SYSTEMS 1989* 173 (W. Butler ed. 1989) (Dobbs Ferry, NY: Transnational Juris Publication).

INTERNATIONAL CHAMBER OF COMMERCE, *FOREIGN INVESTMENT IN THE USSR—KEY 1990 LEGISLATION* (1991) (Paris: ICC Publications).

A collection of 1990 Soviet laws, decrees, and regulations in English translations that are relevant to foreign trade and investment.

Summary Table of Contents:

Introduction by Dr. Klaus Cantzler.

I. Decree of the President of the USSR on Foreign Investment (26 October 1990).

II. Law of the Union of Soviet Socialist Republics on Enterprises in the USSR Decree No. 1524 (4 June 1990).

III. Decree No. 1530 of the Supreme Soviet of the USSR on the Procedure for Entry into Effect of the Law of the USSR on "Enterprises in the USSR."

IV. USSR Council of Minister Resolution NO. 776 on Measures to Form the All-Union Foreign Currency Market (4 August 1990).

V. Decree of the President of the SSR on the Introduction of a Com-

mercial Exchange Rate for the Ruble and the Creation of a Whole-Soviet Currency Market (26 October 1990).

VI. Decree of the President of the USSR on the Use of Hard Currency Resources (2 November 1990).

VII. Law of the USSR Concerning Taxes on Enterprises, Associations and Organizations (14 June 1990).

VIII. Decree of the Supreme Soviet of the USSR on the Procedure for Putting into Effect the USSR Law Concerning Taxes on Enterprises, Associations and Organizations (14 June 1990).

IX. Law on Property in the USSR Adopted by the Supreme Soviet of the USSR (March 6, 1990).

Kelley, David and Joshua B. Sand, *THE SOVIET JOINT ENTERPRISE DECREE: LAW AND STRUCTURE* (1989) (Cambridge, MA: Harvard University Russian Research Center, 302 pp.).

English translations of the relevant Soviet legislation relating to joint ventures or enterprises between Soviet industrial organizations and foreign corporations or firms. The coverage begins with the USSR Supreme Soviet Presidium and the USSR Council of Ministers decrees of January 13, 1987, and extends through the USSR Council of Ministers amending a very important resolution of December 2, 1988. The compilation includes all relevant ministerial regulations as well as the USSR Law on Cooperatives of May 26, 1988 and the USSR Supreme Soviet Presidium Decree relating to Cooperatives of the same date. The compilers have prepared a useful 25-page introduction. There is also a reprint of an article by Marshall I. Goldman on *Joint Ventures Return to Communist China and the Soviet Union*, originally published in *BUSINESS IN THE CONTEMPORARY WORLD* (Winter 1989), a list of joint enterprises registered as of December 15, 1988 (based on Russian language lists published in the *EKONOMICHESKAIA GAZETA*), a chart of United States-USSR trade statistics from 1957 to 1987, sample feasibility studies for the establishment of joint enterprises, and forms of relevant documents.

Lecat, Jean-Jacques and Tatiana Desjobert, *Legal and Tax Environment of Joint Ventures in the USSR*, 1990 REV. DR. AFF. INT'L 557 (1990).

A short survey of the laws pertaining to joint ventures in the Soviet Union. The article is published in both English and French.

*LEGAL REGULATIONS ON JOINT VENTURES IN THE USSR* (1988) (Washington: Heron, Burchette, Ruckert and Rothwell; Moscow: The USSR Chamber of Commerce and Industry) (2 vols., mimeo).

A collection of Soviet decrees, regulations, and instructions, enacted between January 13 and November 30, 1987 and dealing with the establishment and regulation of joint ventures between Soviet organizations and

foreign business entities. It includes the Decree of the Presidium of the USSR Supreme Soviet of January 13, 1987 *On Questions Concerning the Establishment in the Territory of the USSR and Operation of Joint Ventures, International Amalgamations and Organizations with the Participation of Soviet and Foreign Organizations, Firms and Management Bodies*; a Decree of the USSR Council of Ministers of January 13, 1987 on the same matter; the October 1987 amendments thereto; and various related decrees, regulations, and instructions of the USSR Ministry of Finance, the State Committee for Supplies, and other governmental entities. No explanations or commentaries are attached to the translation.

LEGAL AND PRACTICAL ASPECTS OF DOING BUSINESS WITH THE SOVIET UNION (1988) (Commercial Law and Practice: Course Handbook Series No. 464. New York: Practising Law Institute, 1736 pp.).

Papers or outlines of presentations on developments in the organization and regulation of Soviet foreign trade, foreign investment in the Soviet Union, and joint ventures between Soviet and Western enterprises. There are also papers on the United States policy towards trade with the Soviet Union. More than two-thirds of the volume consists of English translations of relevant Soviet laws, legal forms, and other documents.

The volume includes the following papers and outlines:

*Foreign Investments in the Soviet Union under Perestroika: Observations on Policy Law, and Practice—the USSR's New Framework for Trade and Investment Assessed by One of Its Architects* by Anatoly P. Belov, Chief Department of Legal Protection of Foreign Economic Relations, the USSR Ministry of Justice;

*Policy Framework for Trade and Investment in the USSR* by John P. Hardt of the Congressional Research Service in the Library of Congress, Washington;

*The Legal Environment of Joint Ventures in the Soviet Union* by Harold J. Berman;

*Practical Aspects of Initiating Contact, Submitting Proposals, and Negotiating Agreements in the USSR* by Edward V. Lahey, Jr., General Counsel, Pepsico, Inc.;

*The Process of Negotiating a Joint Venture in the USSR: Questions Resolved and Unresolved* by Sarah C. Carey of Heron, Burchette, Ruckert & Rothwell in Washington;

*The Soviet Joint Venture Law in Practice* by Charles E. Barnett;

*Understanding the Reorganization of the Soviet Foreign Trade Apparatus* by Richard Dean of Coudert Bros. in New York City and Moscow; and

*Licensing Transactions in the USSR* by Thomas L. Shillinglaw, Counsel, Corning Glass Works.

A NEW LOOK AT DOING BUSINESS WITH THE SOVIET UNION (1989) (Course Handbook Series No. 506. New York: Practising Law

Institute, 391 pp.).

This publication contains course materials of a Practising Law Institute program on the latest legal developments in the foreign business and investment activities of the Soviet Union. It consists of the following papers and articles:

*Foreign Investment in the Soviet Union under Perestroika* by Peter J. Pettibone of Lord Day & Lord, Barrett Smith in New York City;

*Technology Transfer Transactions with the USSR: Experience of USA Companies* by Thomas L. Shillinglaw, Counsel, Corning Glass Works;

*Special Economic Zones in the USSR: Legal and Practical Issues* by Eugene Theroux of Baker & McKenzie in Washington;

*The Soviet Joint Venture Law in Practice* by Charles E. Barnett, Vice President and General Counsel, Combustion Engineering, Inc.;

*The Soviet Joint Venture Laws: Their Provisions and Purposes* by Sarah C. Carey, Heron, Burchette, Ruckert & Rothwell;

*The Process of Closing the Deal* by Richard N. Dean, Coudert Bros.;

*Practical Aspects of Initiating Contact, Submitting Proposals, and Negotiating Joint Venture Agreements in the USSR* by R. Scott Toop, Counsel, Pepsico, Inc.;

*Dispute Resolution and Choice of Law in U.S.-Soviet Trade* by Jonathan H. Hines;

*Western Lending to the Soviet Union* by Richard Johnson; and

*Joint Ventures in the Soviet Union Law; and Practice* by Eugene Theroux and Arthur L. George.

The papers are replete with useful practical information, and the discussion of the relevant issues demonstrates a highly sophisticated level of understanding of the purposes and problems of the Soviet attempts to improve its economy and its international economic stature. The paper by Eugene Theroux and Arthur L. George on joint ventures in the Soviet Union is one of the clearest on the subject. It is accompanied by an English translation of the relevant Soviet decrees and regulations.

Schneider, Richard C., Jr., *Developments in Soviet Property Law*, 13 *FORDHAM INT'L L.J.* 446 (1989).

This article attempts to describe the agonizing conceptual incertitudes and jurisprudential convolutions of Soviet property law reforms of the late 1980s and early 1990. It begins with the property and ownership provisions of the Soviet Constitution (as amended through March 1990), and more specifically, with the property concerns of foreign participants in joint ventures, especially as they might be affected by the joint venture legislation of 1987. This is followed by a rather tortured explanation of the Soviet Law on Property of March 1990 and by brief references to the March 1990 Law on Land and the November 1989 Law on Leasing. The article includes English translations of some Soviet law provisions. It is not a successfully organized article. The author must have begun it as an

examination of the property rights of joint venture participants. Eager editing probably expanded it into a confusing, full-length article with inadequate citations.

US-USSR JOINT LEGAL SEMINAR, FIRST AND SECOND ANNUAL US-USSR LEGAL SEMINAR (1989) (Moscow, September 1988, and Washington, D.C. and New York City, January 1989) (Washington: Office of General Counsel, United States Department of Commerce, 136 pp.).

A collection of short papers, between two to six pages in length, by Soviet lawyers on topics of interest to United States businesses and investors who are interested in trading with the USSR. The papers contain succinct explanations of specific areas of law. Some of these explanations are very useful. The topics covered include regulation of foreign trade, contracts, intellectual property, joint ventures, arbitration, and many related topics.

*U.S.-Soviet Trade and Perestroika*, 23 COLUM. J. WORLD BUS. 5 (1988).

This "Focus" issue of the COLUMBIA JOURNAL OF WORLD BUSINESS contains a series of articles of Soviet-United States trade in general and Soviet-United States joint ventures in particular:

*A New Era in Soviet-American Trade* by Jonathan Sanders;

*Restructuring the Soviet Foreign Trade System* by Stephen Gardner;

*The Role of Soviet Banking and Finance Law in Joint Enterprises* by Peter Maggs;

*Joint Ventures in the USSR: Soviet and Western Interests and Incentives with Considerations for Negotiations* by Alan B. Sherr;

*US-Soviet Joint Ventures: Current Status and Prospects* by Michael McGloin and Tom Laurita;

*Updating Joint Venture Law and Practice* by Richard Dean;

*Co-Production in the USSR: Joint Production Without Joint Ventures* by Elise Miller and Paul Surovell;

*What Business with the Soviets? Current Soviet Priorities and Business Opportunities for American Companies Beyond the Sphere of Strategic High Technology* by Charalambos Vlachoutsicos;

*Breaking Down Barriers to US-Soviet Trade with Soviet Market Access for Small and Medium Size Companies* by Eurgun J. Milosh;

*Glasnost and Soviet Construction: New Opportunities for American Business* by June Q. Koch; and

*The Experience of U.S. Firms with the Soviet Union: What Does the Past Tell Us To Do in the Future?* by James L. Hecht and James K. Oliver.

UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS,  
JOINT VENTURES AS A FORM OF INTERNATIONAL ECONOMIC COOPER-



ATION: BACKGROUND DOCUMENTS OF THE HIGH-LEVEL SEMINAR ORGANIZED BY THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS IN COOPERATION WITH THE STATE FOREIGN ECONOMIC COMMISSION, AND THE STATE COMMITTEE ON SCIENCE AND TECHNOLOGY OF THE UNION OF SOVIET SOCIALIST REPUBLICS, MOSCOW, 10 MARCH 1988 (New York: United Nations, 210 pp.) (U.N. Doc. ST/CTC/93; UN Sales No. E/88/II.A.12).

Includes English translations of Soviet decrees, orders, and regulations pertaining to joint ventures from January 13, 1987 through November 30, 1987.

### B. *Practical Guidebooks on Forming and Operating Joint Ventures*

Among these works are the most immediately valuable to the beginning or experienced joint venturer. Based almost wholly on the actual experience of the compilers, these publications divulge a good deal of information along the lines of "what they don't teach you at . . . ."

Vecchio, Mark S., *Soviet Joint Ventures: Keeping an Eye on the Goalposts*, 9 INT'L FIN. L. REV. 37 (April 1990).

A brief comment about the May 6, 1989 USSR Council of Ministers decree that amends and classifies several provisions of the January, 1987 Soviet joint venture law. The amendments attempt to make the original joint venture law more attractive for foreign investors.

Arbess, Daniel J., *A Few Things U.S. Businesspeople Should Know About Joint Ventures in the Soviet Union: A Lawyer's View (Symposium on U.S.-Soviet Military and Economic Relations)* 22 N.Y.U. J. INT'L L. & POL. 411 (1990).

A very informative article about practical issues facing United States lawyers involved in the process of negotiating and establishing joint ventures in the Soviet Union.

Aulin, Lisen, *ESTABLISHING JOINT VENTURES IN THE USSR* (1990) (Deventer, The Netherlands; Boston: Kluwer Law and Taxation Publishers, 149 pp.).

In general, this book deals with the formation and management of joint ventures in the Soviet Union. Setting it apart from other works on the same subject is its examination of the impact of the 1989 Law on State Enterprises and the 1990 Law on Enterprises, which entered into force on January 1, 1991, on the operation of the joint venture law. There are also brief references to the 1988 Law on Cooperatives, the 1990 USSR Council of Ministers Decree on Joint-Stock Companies, and the laws on foreign and domestic investments. On the whole, the book is too brief to be of

any meaningful use. About one-third of it is taken up by texts of various forms and documents, which are not explained adequately in the text, and by a BBC English translation of the 1990 USSR Law on Ownership. Originally the book was published in Swedish. This English edition was revised and updated.

Burt, Jeffrey, A., *Joint Venture Experience: Observations on the Business and Legal Challenges (Symposium on U.S.-Soviet Military and Economic Relations)* 22 N.Y.U. J. INT'L L. & POL. 435 (1990).

An interesting paper on joint ventures in the Soviet Union. It contains many practical tips as well as descriptions of successful joint ventures that involve United States participants (e.g., Pepsi Cola, McDonald's, and Honeywell).

ERNST AND YOUNG, *BUSINESS AND FINANCIAL ISSUES FOR JOINT VENTURES* (1989) (New York: Ernst and Young, 16 pp.).

This work is basically a transcript of the presentation of Ernst and Young partner James C. Boland to the Small Business Committee of the United States-USSR Trade and Economic Council meeting. The presentation highlights major issues at the following stages in the formation and operation of joint ventures: strategy, negotiations, agreement, operations, and liquidation. It is a concise and sophisticated rendition of the life of a joint venture, but not overly burdened with legal or accounting technicalities.

DOING BUSINESS IN THE SOVIET UNION (1989) (New York: Price Waterhouse, 71 pp.).

A very convenient short guide on the economic structure of the Soviet Union and the regulation of business in that country. There are short sections on foreign investments, joint ventures, and taxation of foreigners. Compiled in June 1989, this publication is another volume in the excellent series of international guides published by the international accounting firm of Price Waterhouse.

Frenkel, William G., *Soviet Cooperatives: New Private Enterprises as Trade and Foreign Investment Partners in the U.S.S.R.*, 4 ICSID REVIEW—FOREIGN INVESTMENT L.J. 63 (1989).

This article by an associate of the New York law firm of LeBoeuf, Lamb, Leiby, & MacRae describes the operation of the Law on Cooperatives, which was enacted by the Supreme Soviet of the USSR on May 26, 1988. The method adopted by the author is quite ingenious. Because the Soviet law on the subject of cooperatives is totally undeveloped, he relies on United States precedent for guidance. The article also examines the interesting question of whether private cooperatives may participate in joint ventures with foreign businesses pursuant to the Soviet joint venture law of January 13, 1987. The author believes that private cooperatives will

eventually play an important role in the development of joint ventures. At the time of this article's publication, very few private cooperatives in the Soviet Union entered into joint ventures or trade agreements with Western firms, although one example was the arrangement between INFEX, an independent Soviet consulting subsidiary of the Washington law firm of Arnold & Porter. According to the author this is about to change.

Goldman, Marshall I., *Joint Ventures Return in Communist China and the Soviet Union*, 1 *BUS. IN THE CONTEMPORARY WORLD* 84 (Winter 1989), reprinted in KELLEY, DAVID F. and JOSHUA B. SAUL, *THE SOVIET JOINT ENTERPRISE DECREE: LAW AND STRUCTURE* (1989) (Cambridge, MA: Harvard University Russian Research Center).

Hertzfeld, Jeffrey M., *Joint Ventures: Saving the Soviets from Perestroika*, 69 *HARV. BUS. REV.* 80 (Jan.-Feb. 1991).

The author of this exceptionally interesting article is a partner at Selans Hertzfeld & Heilbronn, a Paris-based international law firm. He has represented many United States corporations in their dealings in the USSR. In this article he argues that the success of any joint venture in the Soviet Union is dependent on the willingness of the foreign partners to make a long-term investment plan for the growth of the joint venture and to allow for its vertical integration. He does not look favorably upon short-term investments or deals. They may be successful on rare occasions in special circumstances, but in general, they are doomed to failure. The article examines those aspects of the Soviet economy that are relevant to joint ventures. It also touches upon different legal and political considerations. The article includes many practical examples of the strategies and experiences encountered by such successful United States investors in Soviet joint ventures as McDonald's and others. Easy to read, this article should not be missed by anyone interested in joint venture activities in the Soviet Union.

HOBER, KAJ, *JOINT VENTURES IN THE SOVIET UNION* (1989) (Dobbs Ferry, NY: Transnational Juris Publications) (Looseleaf) (A publication of the Parker School of Foreign and Comparative Law at Columbia University).

A detailed and exceptionally well-organized manual on the laws relating to the formation and operation of international joint ventures in the Soviet Union. Most of the text examines the Gorbachev legislation on joint ventures, but there are also sections dealing with pertinent areas of civil law, labor law, taxation, and the regulation of Soviet foreign trade in general. There is also a useful chapter on "Negotiating the Joint Agreement." The bulk of the book consists of texts of the relevant decrees, regulations, instructions, and forms, translated into English. The latest legislative measure included in the volume is the Decree of the USSR Council of Ministers of December 2, 1988, but the publishers state that there will be future

supplements. The author is a practicing partner of the New York law firm of White & Case in Stockholm and a lecturer on Soviet and East European law at the University of Uppsala.

HONDANEN, MATTI, *JOINT VENTURES IN THE USSR* (1990) (Helsinki: Kansallis-Osake-Pankki, 350 pp.).

This publication, not seen by the editor of this bibliography, is supposed to be a practical handbook on the formation of joint ventures in the Soviet Union. Its author, a bank lawyer in Finland, has participated in the arrangement of several joint ventures. The publication can be ordered from: ILC, Tempelkatu 3-5A, SF-00003, Helsinki, Finland.

*JOINT VENTURE OPERATIONS IN THE USSR* (1989) (Amsterdam: KPMG International Office, 163 pp.).

Written by members of the international accounting firm of KPMG, this attractive paperbound booklet is also one of the best introductions to the formation and operation of joint ventures in the Soviet Union. Organized as a manual, it takes the reader step-by-step through the various practical issues a non-Soviet participant of a joint venture may expect to encounter in dealings with the Soviet authorities. The information is presented clearly and concisely, but the coverage is surprisingly complete. There is no such detail as would enable a person interested in starting a business in the Soviet Union to determine exactly who to see in that country for permits, authorizations, and what steps to take in the incredibly arduous process of getting things done. But such information is not available in any of the other books and articles on Soviet joint ventures. It is the sort of information that persons "in the know," following the Soviet tendency for secrecy, do not divulge. About two-thirds of the book is taken up by appendices containing texts of the relevant laws, as well as various forms, tables, and other documents applicable to joint ventures. English translations of the laws were done by the Finnish-Soviet Chamber of Commerce. The discussion in the textual part of the books, as well as the translated materials in the appendices, are based on Soviet laws as they existed on January 1, 1989.

KNIGHT, MISHA G., *HOW TO DO BUSINESS WITH RUSSIANS: A HANDBOOK AND GUIDE FOR WESTERN WORLD BUSINESS PEOPLE* (1987) (Westport, CT: Quorum Books, 335 pp.) (Distributed by the I.C.C., Paris, France).

This two-part book can be quite useful for Western business trading with the Soviet Union. The content is:

Part One: Trading with the Soviet Union: The Way it Operates;

Part Two: The Structure of Soviet Foreign Trade Operations and Order of a Business Transaction.

Lewenz, Susan M.H., *Introductory Guide to Joint Ventures in the Soviet Union*, in *LEGAL ASPECTS OF TRADE AND INVESTMENT IN THE SOVIET UNION AND EASTERN EUROPE* (1990) (Commercial Law and Practice Course Handbook Series No. 549. New York: Practising Law Institute).

LEWENZ, SUSAN M.H., *INTRODUCTORY GUIDE TO JOINT VENTURES IN THE SOVIET UNION* (1990) (Washington: International Trade Administration, U.S. Department of Commerce, 23 pp.).

A first-rate short introduction to the Soviet business environment and climate. The major issues of joint venture start-up are explained in a clear and helpful manner.

OSAKWE, CHRISTOPHER, *JOINT VENTURES WITH THE SOVIET UNION: LAW AND PRACTICE* (1990) (Salem, N.H.: Butterworths) (Looseleaf 400 pp.).

In this work Osakwe first describes the Soviet legal system and government framework in general because he believes that their understanding is essential to the conduct of trade in the Soviet Union. This is followed by a detailed explanation and analysis of the joint venture legislation (the Joint Venture Decree of January 1987 and its amendments). Finally, Osakwe examines the practical aspects of joint venture operations in the Soviet Union.

Osakwe, Christopher, *Cogitation on the Soviet Joint Venture Law of 1987*, 11 *WHITTIER L. REV.* 473 (1989).

STARR, ROBERT, AND SALLY MARSH, *JOINT VENTURES IN THE USSR* (1989) (New York: World-Wide Media Information, Inc.).

Practical information about joint venture transactions in the Soviet Union including drafting of agreements and registration. Starr is the London resident of the New York law firm of Cole, Corette & Abruryn.

Surrey, Walter Sterling and Vladimir Lechtman, *New Soviet Joint Venture Law: A Political Curiosity or a Real Investment Opportunity?*, in *PRIVATE INVESTORS ABROAD—PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS IN 1988* 6-1 (1989) (New York: Matthew Bender & Co.).

This article examines joint enterprises in the Soviet Union. It starts with the legislative history of the law itself. Turning to more practical issues, it then discusses the formation of joint ventures and comments on their resemblance to corporations. This is followed by a discussion of the many restrictions and obstacles joint venture operations can expect to encounter in the Soviet Union by reason of its undeveloped domestic market, as well as such other factors as procedures imposed on the handling of capital, management requirements, distribution of profits, banking, financing, res-

olution of disputes, insurance, bookkeeping and accounting, export and import, sale and dissolution, taxation, and last but not least, labor relations.

### C. *Broad-Based Analytical Works on the Concept of Joint Ventures*

For the thoughtful businessperson or practitioner, these books contain intellectual musings on the present success and probable developments of the Soviet joint venture experiment.

GORBACHEV'S NEW THINKING: PROSPECTS FOR JOINT VENTURES (R. Liebowitz ed. 1988) (Cambridge: Ballinger (for the International Institute for Economic Advancement), 213 pp.).

A short review note in FOREIGN AFFAIRS (Spring 1989) had the following to say about this book:

In spite of the subtitle, only one of the papers deals primarily with joint ventures. It mainly calls for a better understanding of the usefulness of compensation agreements. Another study says that disappointment with compensation agreements is among the reasons Japanese-Soviet ventures in the Far East are not doing well. In other papers, a number of academics and three intelligence officials reflect familiar Western thinking about what perestroika is all about and how far it may go.

LINDSAY, MARGIE, INTERNATIONAL BUSINESS IN GORBACHEV'S SOVIET UNION (1989) (London: Pinter Publisher, 212 pp.).

Though this book is presumably intended for the general reader, it contains a surprising amount of useful information about economic reforms in Gorbachev's Soviet Union through mid-1989. It begins with an examination of the July 1987 Law on State Enterprises and then goes on to describe the foreign trade, banking, price and wage, and other economic reforms of that period. Separate chapters discuss the 1987 legislation on joint ventures (including its December 1988 amendment) and the Law on Cooperation of July 1988. The conclusion is cautious and gloomy. The author does not think that *perestroika*, in the shape it was presented by Gorbachev in the late 1980s, is all that original. There have been other reform attempts in the Soviet Union, especially under Brezhnev, structurally just as deep and radical as those proposed by Gorbachev. None of them were successful, and the author thinks that Gorbachev's *perestroika* reforms of the late 1980s must fail too. Without radical changes in the economic structure, conditions are expected to be as bad in the 1990s as they were in the 1980s. Real improvements would require a total change in the structure itself as well as true liberalization from centralized and excessively bureaucratic control. Written by the editor of the FINANCIAL TIMES BUSINESS INFORMATION NEWSLETTER, EAST EUROPEAN MARKETS, this book in an earlier version appeared as a FINANCIAL TIMES

## BUSINESS INFORMATION MANAGEMENT REPORT.

UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE, EAST-WEST JOINT VENTURES: ECONOMIC BUSINESS, FINANCIAL AND LEGAL ASPECTS (1989) (New York: United Nations, 189 pp.) (UN Doc. ECE/TRADE/162; UN Sales No. E.88.II.E.18).

This UN Economic Commission for Europe report surveys, in general, the Eastern European experience in joint ventures with foreign participants during the late 1980s. It examines the various aspects of joint ventures and evaluates their overall popularity and success. For the law researcher, the second part of the report which examines in some detail the legal and regulatory issues relating to joint ventures, their function, states, management, and taxation is most useful. The Soviet joint venture legislation of 1987 as well as the joint venture experience of the Soviet Union in general are discussed throughout the report. English translations of the Soviet joint venture legislation of January 13, 1987 and the USSR Council of Ministers amending decree of September 17, 1987 are fully reproduced at the end of the publication.

D. *Independent Articles by Scholars and Practitioners*

These works represent the largest group of research on the topic. We thought it valuable to list them in chronological order so that the reader can observe their growing sophistication and lessening reliance on the actual joint venture legislation as the *alpha* and *omega* source of answers to practical problems. The best of the early works anticipates the peculiarities in Soviet economic dealings that can confound cooperation *ab initio*. Research from mid-1988 to late 1989 often contains accounts of disappointing practical experiences and excessive bureaucratic difficulties. Again, the best research of this period helps the practitioner to avoid pitfalls during negotiations and at the initial start-up phase of a joint venture. At times, articles will include annexes of such useful devices as specimen contract clauses or founding documents, and we have noted these features in some of the accompanying comments.

## 1. 1987

Carpenter, Russel M., Jr. and Bradford L. Smith, *U.S.-Soviet Joint Ventures: A New Opening in the East*, 43 BUS. LAW. 79 (1987).

A step-by-step description of the Joint Venture decree issued by the USSR Council of Ministers on January 13, 1987.

Dunn, Keith M., *The New Soviet Joint Venture Regulations*, 12 N.C.J. INT'L L. & COM. REG. 171 (1987).

One of the earlier articles on the subject, it examines the changes in Soviet foreign trade announced by the Central Committee of the CPSU on September 23, 1986. The bulk of the article discusses the provisions dealing with joint ventures between Soviet enterprises and foreign firms.

Hober, Kaj, *Joint Ventures with the Soviet Union*, 6 INT'L FIN. L. REV. 15 (1987).

Of the flurry of the early articles on Soviet joint venture legislation of January 1987 written soon after its appearance, Hober's work is one of the most practice-oriented. The author provides not only a concise overview of the legislation, but also alerts Western participants to an array of potential issues well outside its text. Even several years later, it remains a fine introductory work for the whole area of investment and trade participation by foreigners in the Soviet Union.

*Joint Venture Proposal Needs Improvements*, 4 INT'L TRADE REP. (BNA) No. 5, 130 (Feb. 1987).

Kempton B. Jenkins, AMRCO vice-president for international and government affairs, shares his thoughts on the new joint venture law as well as arms control and GATT.

Mendes, Errol P., *The Soviet Union: Open for Business?* 1 REV. INT'L BUS. L. 357 (1987).

A brief review of the 1987 Soviet decree authorizing the establishment of joint ventures between foreign corporations and local enterprises in the Soviet Union. The article only examines the topic from the point of view of the decree's text.

Richardson, David R., *Glasnost: Joint Ventures Now Permitted in the Soviet Union*, 3 FLA. INT'L L.J. 125 (1987).

An immediate reaction to the 1987 Joint Venture Law, the article spells out the major areas of interest and concern occasioned by the introduction of this legislation: formation of joint ventures, issues of ownership, profits and currency exchange, and taxation.

Ross, Kelly, *Foreign Investment: New Soviet Joint Venture-Law-Edict on the Procedures for the Creation in the USSR of Joint Enterprises in which Soviet Organizations and Firms from Capitalist and Developing Countries are Partners*, 28 HARV. INT'L L.J. 473 (1987).

A detailed overview of the 1987 Joint Venture Decree, this article provides a useful working introduction.



## 2. 1988

Czubinsky, Zbigniew A., *The Soviet Joint Venture Law: Selected Financial, Legal, and Practical Problems*, 28 EUR. TAX'N 390 (1988).

This brief paper emphasizes the accounting requirements and tax incidents of the joint venture legislation.

Hertzfeld, Jeffrey M., *Applicable Law and Dispute Settlement in Soviet Joint Ventures*, 3 ICSID REVIEW—FOREIGN INVESTMENT L.J. 249 (1988).

A very interesting examination of the likely methods and procedures for the resolution of disputes among the Soviet and the foreign members of joint ventures. The author surveys appropriate Soviet and international dispute settlement avenues and concludes that further improvements in Soviet dispute settlement laws may be required.

Onorato, William T., *West-East Foreign Investment in the International Petroleum Sector: The Sakhalin Continental Shelf Oil and Gas Project*, 3 ICSID REVIEW—FOREIGN INVESTMENT L.J. 326 (1988).

A discussion of a joint Soviet-Japanese oil exploration project in the Sakhalin area.

Pattison, Joseph E., *Soviet Joint Ventures*, CORPORATE BOARD 17 (1988).

This short article is based on the author's discussions with Soviet trade officials in Moscow and Washington. It reports on the hurdles and potential rewards that await United States corporations that wish to run the maze of Soviet economic regulations.

Sherr, Alan B., *Becoming Partners with the Russians*, 25 ACROSS THE BOARD 26 (1988).

Forming a Soviet-United States joint venture has been eased by recent legislation, but it still remains a complex project. The Soviet economy is hampered by the centralized system of planning and managing and the divisions of labor. The Soviet Union does not want too many Western imports, for fear of becoming indebted to the West. The major problem in a joint venture is the nonconvertibility of the ruble. The first step in the negotiations is designing a letter of intent. The negotiations involve different ministries and agencies but the Soviets are attempting to streamline the process. A major concern in the negotiations is creating a value for the Soviet partner that somehow reflects the true worth of the ruble. This loss in official exchange rate can be compensated in Soviet real estate and equipment.

SHERR, ALAN B., SOCIALIST-CAPITALIST JOINT VENTURES IN THE

USSR: LAW AND PRACTICE (1988) (Providence: Centre for Foreign Policy Development, Brown University, 48 pp.) (Briefing Paper #1).

An interesting analysis of the causes motivating Soviet interest in joint ventures and the prospects such ventures offer to corporations and firms in the West. This is followed by a critical look at the process of negotiations for the establishment of joint ventures and the actual operation or management of the joint ventures. An appendix lists all joint ventures registered with the USSR Ministry of Finance through March 1988.

Viehe, Karl W., *Joint Ventures in the Soviet Union Under the New Regime—Boom or Bust*, 1 TRANSNAT'L LAW. 181 (1988).

This article is the result of a conference of United States and Soviet lawyers and United States businesspeople held at the International Law Institute. The United States and Soviet representatives worked through a series of fundamental joint venture questions such as legal status, operations, administrative supervision, and tax treatment.

### 3. 1989

Bost, David M., *The 1987 Soviet Joint Venture Law: New Possibilities for Cooperation and Growth in East-West Relations*, 17 DEN. J. INT'L L. & POL. 581 (1989).

A brief descriptive examination of the Soviet legislation introduced by Gorbachev to attract foreign participation and investment in the development of the Soviet economy.

Boukaouris, Georgios N., *Joint Ventures in the USSR, Czechoslovakia and Poland*, 21 CASE W. RES. J. INT'L L. 1 (1989).

A detailed comparative analysis of joint ventures in the three countries. It includes discussion of the original Soviet legislation of January 13, 1987 and the amending decree of September 17, 1987. Because these three countries have introduced further and quite radical changes for joint ventures, the article is somewhat dated. Nevertheless it makes many useful comparisons between the three countries.

Grzybowski, Kazimierz, *Capitalist Investment in the Soviet Union, Past and Present*, 35 OSTEUROPA RECHT 23 (1989).

A veteran Soviet law expert examines the January 13, 1987 Soviet legislation regarding joint enterprises between Soviet organizations and foreign firms in the light of the economic structure of that country and the history of its attitudes towards foreign investments.

Hines, Jonathan H., *Dispute Resolution and Choice of Law in the United States-Soviet Trade*, 15 BROOKLYN J. INT'L L. 591 (1989).

This article examines trade dispute resolutions with the Soviets by means of international arbitration proceedings. Special attention is devoted to joint venture disputes. The article also examines questions of applicable law in disputes between Soviet enterprises and their foreign trading or investment partners. A useful set of sample contract provisions on arbitration sites and waiver of sovereign immunity is included in the appendix.

Lieberman, Edward H., Robert Starr, Michael Esser, and Peter Waters, *Investment in the Soviet Union and in Hungary: A Comparison of the New Soviet and Hungarian Investment and Tax Laws*, 23 GEO. WASH. J. INT'L L. & ECON. 1 (1989).

This article compares the relatively liberal investment legislation Hungary has had since the 1970s with the quite rigid and restrictive joint venture model the Soviet Union introduced in January 1987. The authors quite clearly favor the Hungarian approach, which permits direct foreign investment in Hungary, over the distrustful attitude the Soviets adopt towards foreigners interested in operating in the country. In addition to a comparison of the laws of the two countries on investment and joint ventures, it also examines the investment protection measures, the taxation incidents of investments and joint ventures, and the use of courts to resolve investment or joint venture disputes. The authors explain that the Hungarians are far ahead of the Soviet Union in attracting foreign investments. Hungarian legislative programs pertaining to the conduct of business and the operation of entrepreneurial activities is not only friendlier, but also much more comprehensive and sophisticated than the incompletely developed scheme adopted by the Soviets in the late 1980s.

Nigh, Douglas and Karen D. Smith, *The New US Joint Ventures in the USSR: Assessment and Management of Political Risks*, 24 COLUM. J. WORLD BUS. 39 (1989).

Based on interviews with the executives of United States corporations in 1989, this study examines the perceptions and assessments of political risks by the earliest United States entrants into the Soviet joint venture market. Despite many uncertainties, the United States executives viewed the extent of the risk to be insignificant. In political terms, they were optimistic about the future of the Soviet Union.

Osakwe, Christopher, *The Death of Ideology in Soviet Foreign Investment Policy: A Clinical Examination of the Soviet Joint Venture Law of 1987*, 22 VAND. J. TRANSNAT'L L. 1 (1989).

A detailed and extensively documented analysis of the Soviet legislation, introduced on January 13, 1987 and repeatedly amended thereafter, permitting the creation of joint ventures on Soviet soil with the participation of foreign capital and management. The article begins with a discussion of *perestroika*. This is followed by a general assessment of conducting busi-

ness in the Soviet Union and entering into joint ventures with Soviet enterprises. The bulk of the article consists of a systematic examination of the joint venture law of January 13, 1987 and amendments thereof. The defects and shortcomings of the law are examined in detail, and the point is raised about the inherent unconstitutionality of other Soviet laws (civil law, labor law, taxation) that may have a direct bearing on the operation of joint ventures. The conclusion looks at some of the loopholes in the existing law and suggests reforms for its improvement. Several appendices reproduce English translations of the several decrees of January 13, 1987 that make up the original joint venture legislation and the amending decree of the USSR Council of Ministers promulgated on December 2, 1988.

Smucker, Conrad J., *Soviet Taxation of United States Businesses: State of the Law and Recommendations*, 42 TAX LAW. 801 (1989).

A thorough and extensively researched examination of Soviet tax legislation relating to the taxation of foreigners and foreign entities. In addition, there is a discussion of the Soviet-United States tax treaty of 1973 as it affects United States businesses with activities in the Soviet Union. Unfortunately, this first-class article was published just prior to the extensive Soviet revisions of its tax laws in late 1989 and early 1990. Nevertheless, it is still useful as a general introduction to the taxation of foreign businesses in the Soviet Union, especially as it points out fundamental anomalies in the Soviet tax policy.

Tiefenbrun, Susan W., *Joint Ventures in the USSR, Eastern Europe, and the People's Republic of China as of December 1989*, 21 N.Y.U. J. INT'L L. & POL. 667 (1989).

A broad survey of legislative measures for foreign investments and joint ventures introduced in the Soviet Union, China, and the Eastern European countries in the late 1980s. Because much of this legislation is provisional and its application is subject to political changes and economic reforms taking place continuously in all of Eastern Europe as well as China, the article is bound to lose its relevance rather quickly. Nevertheless, it may be useful as a general introduction to the subject of international economic and trade attitudes in the countries of the region.

Vlachoutsicos, Charalambos, *How Small-to-Mid-Sized U.S. Firms Can Profit From Perestroika*, 31 CAL. MGMT. REV. 91 (1989).

The content of this article is described as follows in the INFOTRAC bibliographic database:

From the viewpoint of a Western practitioner of Soviet trade, this article is addressed to managers of U.S. companies contemplating trade with the Soviet Union. Large companies and multinationals are often too impersonal in their relations, too rigid in their policies, and too slow in their

decisions to grasp the unique opportunities of initiating and sustaining trade with the Soviet Union. Medium-sized and small companies are often better suited to take advantage of the new environment in the Soviet economy. This article shows specific ways to address the process of negotiations involved in Soviet trade and provides information on U.S. and Soviet sources of help to American companies interests in Soviet trade.

#### 4. 1990

Carey, Sarah C., *Foreign Investment in the USSR*, 3 HARRIMAN INSTITUTE FORUM 1 (Feb. 1990).

A brief discussion of joint ventures, investment opportunities in the Soviet Union, and structural and other barriers to such investments.

Feldman, John P., *Soviet Joint Ventures: Providing for Appropriate Dispute Resolution*, 23 CORNELL INT'L L.J. 107 (1990).

Nigh, Douglas, Peter Walters, and James A. Kuhlman, *US-USSR Joint Ventures: An Examination of the Early Entrants*, 25 COLUM. J. WORLD BUS. 20 (Winter 1990).

A follow-up study the 105 United States-USSR joint ventures in USSR formed between November 1987 and October 1989. In addition to a description of the economic, political, and legal circumstances encountered in the formation of these joint ventures, the study examines their status in late 1989. It also discusses the prospects for future United States investment in joint ventures in the USSR. The authors assume an optimistic conclusion. Noting the receptiveness of the Soviet government toward large United States corporations, they believe that an expansion of joint venturing in the USSR depends upon further improvement of relations between the United States and the USSR and, even more so, on the convertibility of the ruble.

#### E. Student Research

These works for the most part reflect a less experienced—but also less jaundiced—perspective. The corpus of such research is by necessity straight interpretation of the different texts making up the joint venture legislation. Nevertheless, startlingly original viewpoints often emerge as law students peruse and digest the law. The best of these articles offer thorough and careful introductory material to what is generally viewed as rather obscure and meager legislation.

Albin, Adam J., *Joint Venture Law in the Soviet Union: The 1920s and the 1980s*, 9 Nw. J. INT'L L. & BUS. 633 (1989).

In this student comment, an attempt is made to draw comparisons be-

tween measures to encourage foreign investment in the Soviet Union during the period of the New Economic Policy of the 1920s and the legislation introduced by Gorbachev in 1987.

Aronson, Tracey E., *The New Soviet Joint Venture Law: Analysis, Issues, and Approaches for the American Investor*, 9 L. & POL'Y INT'L BUS. 851 (1987).

An upbeat description of the Soviet joint venture legislation from the standpoint of a lawyer trained in the United States legal system. Very little reference is made to other areas of Soviet law or Soviet trade administration that may affect the formation and operation of joint ventures. This article mentions the major problem areas for United States businesspeople contemplating starting joint ventures in the Soviet Union. Resolutions to questions are derived from the text of the 1987 Joint Venture Law coupled with commentary and reactions by Western observers soon after the release of the law.

Clarke, Christopher F., *The Soviet Joint Venture Decree and Soviet Labor Law*, 30 VA. J. INT'L L. 761 (1990).

An upbeat student note about the Soviet joint venture law of January 1987, it is useful because it examines the application of Soviet labor law to joint ventures. The author concludes that the interrelationship between labor and management in joint ventures is not spelled out in Soviet law. Nevertheless, he believes that the provisions of Soviet labor law do not create "an insurmountable obstacle to a successful joint venture."

Marino, Marcie, *Bartering with the Bolsheviks: A Guide to Countertrading with the Soviet Union*, 8 DICK. J. INT'L L. 269 (1990).

This student comment reviews the advantages and disadvantages of conducting countertrade arrangements with the Soviet Union. The emphasis of this comment is greater on the United States legal and tax obstacles to such transactions than on the Soviet countertrade.

Mirabito, Richard, *Prospects for Western Investment: A Comparison of Joint Venture Laws in the Soviet Union, Yugoslavia, and China*, 12 B.C. INT'L & COMP. L. REV. 103 (1989).

The joint venture situation in each of these countries is broadly laid out as to history, structure, and economic considerations. A separate section compares the entity in the three countries along a format closely paralleling that of each country's individual treatment.

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

A relatively early historical review of joint ventures between foreign investors and local enterprises in the Soviet Union.

Ruth, Steven, *International Joint Enterprises in the Soviet Union*, 6 UCLA PAC. BASIN L.J. 122 (1989).

A brief survey of the 1987 Soviet joint venture legislation. An interesting aspect of this comment is that it describes who the Soviet and foreign participants in joint ventures are and examines with some specificity different management and operation issues. Also of value is the information, gleaned from press reports, that Cyprus is the preferred conduit for profits flowing from the Soviet Union to third countries because it has low tax rates and no disclosure requirements for offshore corporations.

SARJEANT, NICOLA, *SOVIET JOINT VENTURES: LAW, POLICY AND PRACTICE* (1989) (Toronto: Ontario Centre for International Business, 102 pp.) (International Business & Trade Law Programme Working Paper, No. 17).

A broad review of joint venture legislation and activities in the Soviet Union until mid-1989.

Swindler, Geoffrey D., *Joint Ventures in the Soviet Union: Problems Emerge*, 13 U. PUGET SOUND L. REV. 165 (1989).

In this detailed and critical analysis of the Soviet joint venture legislation of 1987, the author points out a number of systematic and political problems. The whole idea of joint ventures is in many respects inconsistent with Soviet economic policy and practice, and the formation of joint ventures is beset by many difficulties for these reasons. The author believes that these inconsistencies, as well as the bureaucratic attitudes of Soviet government officials, will continue to be a serious obstacle to the development of joint ventures. As long as the Soviet political and economic systems are not substantially reformed, these obstacles will continue to discourage foreign investments in the USSR and the formation of joint ventures in that country.

#### F. *Soviet Research*

Soviet lawyers have also examined joint venture legislation of their country. The works we list here are those that have been translated into English for Western businesspeople and lawyers in the hope of encouraging foreign investments as well as serving the traditional propaganda purposes of the Soviet Union.

Until recently a painfully characteristic feature of Soviet scholarship in the humanities was its heavy ideological, if not to say demagogic, slant. The works we list continue to reflect this approach. It is for this reason that we list them in a separate section. Their approach is still different from Western publications, although they now try to replace old propagandistic habits with more realistic thinking that incorporates

scholarly candor and critical analysis.

Afanasieva, Larisa and Alexey Klishin, *Wholly-Owned Subsidiaries in the USSR?*, 1989 CTC REP. 57 (Spring 1989).

BOGUSLAVSKII, MARK M. AND P.S. SMIRNOV, *THE REORGANIZATION OF SOVIET FOREIGN TRADE: LEGAL ASPECTS* (S. Levitsky ed. 1988) (Armonk, NY: M.E. Sharpe, 210 pp.).

Originally published in Russian as *NOVAIA SISTEMA ORGANIZATSII I UPRAVLENIIA VNESHNEEKONOMICHESKOI DEIATEL'NOST'IU V SSR*, Professor Mark M. Boguslavskii and P.S. Smirnov, a high-level Soviet foreign economic relations official, wrote this work in early 1988. Denis M. McCauley faithfully translated it into English, and Dr. Serge L. Levitsky edited it. The translation was published in cooperation with the Documentation Office for East European Law at the University of Leyden. Dealing with a subject of considerable importance to international trade, the book begins with a description of the new foreign trade system of the Soviet Union as created by the Gorbachev reforms of 1987. This is followed by a more detailed account of the functions and powers of:

-state administrative agencies entrusted with the supervision of foreign trade;

-foreign trade organization of separate universities or department; and  
-foreign trade enterprises as well as their member companies.

Further chapters discuss the direct trade regime established for the CMEA (COMECON) countries, details of the legal relationships between industrial enterprise and the foreign trade entities of the Soviet Union, the relevance of the new legislation to scientific-technological and production cooperation, and last but not least, the formation of joint enterprises between Soviet entities and foreign corporations. A lengthy appendix section reproduces full English translations of the relevant Soviet legislative measures in foreign trade. The book is based on Soviet legislation enacted up to October 1, 1987. For this reason, its use is somewhat limited because many changes are continuously taking place in the highly volatile area of international trade.

BUBNOV, BORIS, *FOREIGN TRADE WITH THE USSR: A MANAGER'S GUIDE TO RECENT REFORMS* (1987) (New York: Pergamon Press, 93 pp.).

This book contains a general description of the foreign trade system introduced in the Soviet Union in January 1987. According to this system, some Soviet agencies and enterprises are able to engage in international trade directly on their own. The book describes the extent of decentralization and deregulation of Soviet foreign trade. One chapter examines the laws relating to joint ventures between Soviet enterprises and Western business entities. Like so many Soviet works, Bubnov's book does not contain a critical analysis of the foreign trade and investment regime estab-



lished by the Soviet government. This is disappointing, and it makes the book much less useful than it might have been. At the time of writing the book, Boris Bubnov was the Chief Deputy Editor of ECOTASS, the commercial and economic bulletin of the Soviet news agency, TASS. Several appendices contain useful information about ECOTASS and other Soviet organizations involved in foreign trade activities. Reviewed by Thomas J. Richardson in 23 COLUM. J. WORLD BUS. 99 (Summer 1988). Noted in 22 GEO. WASH. J. INT'L L. & ECON. 461 (1988).

Dragonov, Vladimir, *Joint Ventures with Firms in Capitalist and Developing Countries*, 1989 FOREIGN TRADE 39.

A brief review of the legal requirements and formalities applicable to joint ventures prior to the December 1988 amendments.

THE LEGAL STATUS OF JOINT VENTURES IN THE USSR (1989) (Moscow: "Social Sciences Today" Editorial Board, 1983 pp.) (USSR Academy of Sciences, Institute of the State and Law, "Law: Studies by Soviet Scholars" Series No. 5).

With contributions from a variety of leading Soviet scholars, this book describes the various political and economic reasons for the formation of foreign-Soviet joint ventures in the Soviet Union. On the whole the approach is rather general. Except for the chapter on foreign exchange and other financial issues in which more details about currency, controls, accounting, and other matters pertaining to fiscal activities are discussed to show their impact on the activities of a joint venture, the discussion tends to be superficial. Most of the book is devoid of detail, and the true value of this book is indirect. Dealing with a topic that has received as much attention, if not more, in the West as in the Soviet Union, it brings out in a vivid manner the differences between legal scholarship in the Soviet Union and in Western countries. As a rule, Western writing attempts to interpret individual provisions of the joint venture laws, to assess their practical application, and to focus on procedures and administrative or managerial issues. The Soviet writing is more concerned with ideology and hierarchy. It devotes much attention to political and economic assertions that serve as justifications for permitting joint ventures on Soviet soil. Is Marxist ideology still so strong for experimenting with capitalist-style entrepreneurial models? In any event, Soviet legal scholarship tends to be superficial and repetitive, and this book is no exception to that stereotype. As for content, in addition to several introductory chapters and the chapter on financial issues, the book discusses procedures for the establishment of joint ventures, their industrial property concerns, and the impact of Soviet labor legislation on their operations. Appendices contain English translations of the USSR Council of Ministers decrees of January 13, 1987 on joint ventures with the participation of Western and CMEA country enterprises, as well as amending Council of Ministers decrees of January 2, 1988 and

March 7, 1989. There is a valuable list of subordinate Soviet legislation.

SMIRNOV, PAVEL, *THE LEGAL REGULATION OF SOVIET FOREIGN ECONOMIC RELATIONS* (1989) (Moscow: Progress Publisher, 207 pp.).

This book is thorough and detailed description of the foreign trade organization created by the Soviet Union in the late 1980s. There are chapters on export and import, joint ventures, technological dealings, payment methods, and trading activities of foreign business entities in the Soviet Union. The book contains a brief description of the system created by the Soviet government in the late 1980s for the conduct and regulation of international trade and investment activities. There are chapters on export and import, joint ventures, technological dealings, payment methods, and trading activities of foreign business entities in the Soviet Union. Much of the book has been outdated by subsequent legislative and administrative changes.

Voznessenskaia, Ninel, *Joint Ventures as an Element of Restructuring the Economic Mechanism*, in *PERESTROIKA AND LAW* (Institute of State and Law of the USSR Academy of Sciences ed. 1989) (Moscow: "Social Sciences Today Editorial Board", Nanka Publishers, pp. 121-141).

Voznessenskaia, Ninel, *Joint Ventures in the Soviet Union*, 1989 REV. DR. AFF. INT'L 187 (1989).

A brief survey of the Soviet legislation on joint ventures, this paper provides a convenient bird's-eye view of the topic.

### G. *Bibliographic Survey*

Dent, Marian G., *Practical Aspects of U.S.-Soviet Trade Law*, 8 LEGAL REFERENCE SERVICES Q. 37 (1988).

A lengthy bibliographic survey of writings on United States-Soviet trade. Compiled by a University of Berkeley law student, it lists some English language materials. The information is current as of December 31, 1987. As this is rapidly changing field, much of the information is dated. Some of the references, however, provide relatively useful guidance to Soviet law in general.

## III. FOREIGN TRADE AND INVESTMENT

### A. *Commercial Law and Practice*

CARVOUNIS, CHRIS C. AND BRINDA Z. CARVOUNIS, *U.S. COMMERCIAL OPPORTUNITIES IN THE SOVIET UNION: MARKETING, PRODUCTION, AND STRATEGIC PLANNING PERSPECTIVES* (1989) (New York:

Quorum Books, 192 pp.).

This excellent historically oriented book about the conduct of foreign business in the Soviet Union includes detailed discussions of export and import restrictions as well as joint ventures. The general discussion is supported by many interesting illustrations of actual experiences of Western businesses in the Soviet Union. The book is a good preliminary reading for businesspeople contemplating trade or investment in the Soviet Union and their legal advisers.

Glick, Steven M. and Alexei A. Klishin, *Doing Business in the U.S.S.R.: Welcome to the 'New Antipodes'*, 9 INT'L FIN. L. REV. 28 (Dec. 1990).

Two attorneys, one American and one Soviet, both practicing in Moscow, describe in a general way the different options foreign businesspeople have for the conduct of trade or for investment in the Soviet Union in 1990. This is the first of several short articles by the two authors. Despite the brevity of their presentation, the authors offer much useful information.

HOBER, KAJ, FOREIGN INVESTMENT IN THE SOVIET UNION (1991) (New York: Dobbs Ferry).

This looseleaf treatise contains an introductory section by the author (who also wrote JOINT VENTURES IN THE SOVIET UNION, *supra* Part II.B.), which explains in relatively general terms the applicability of Soviet law to foreign trade. The author observes that business and trading concepts are still rare in Soviet legislation and, consequently, the legal ramifications of business must be deduced by analogy from the existing, strongly Marxist body of Soviet law.

LEGAL ASPECTS OF TRADE AND INVESTMENT IN THE SOVIET UNION AND EASTERN EUROPE (1990) (Commercial Law and Practice Course Handbook Series No. 549. New York: Practising Law Institute, 1036 pp.).

Like its predecessors, this Practising Law Institute Course Handbook examines the latest legal developments pertaining to trade and investment in the Soviet Union. The emphasis is strongly practical. In addition to papers and outlines, the book also reproduces English translations of Soviet law, decrees, and regulations enacted or promulgated mainly in 1987 and 1988 that deal with the formation and management of joint ventures. It also includes an English translation of the USSR Law on Income Tax of April 23, 1990 and the United States-USSR Trade Relations Agreement of June 1, 1990.

The volume includes the following papers or outlines pertaining to the Soviet Union:

*A Case Study: The Study Union* by Eugene E. Madara;

*Considering Business Opportunities in the Soviet Union in the 1990s*  
by Richard N. Dean;

*Dispute Resolution and Choice of Law in United States-Soviet Trade*  
by Jonathan H. Hines;

*Doing Business in the Soviet Union: The Legal Environment* by Har-  
old J. Berman;

*Introduction Guide to Joint Ventures in the Soviet Union* by Susan  
M.H. Lewenz;

*Investment Protection for Projects in Eastern Europe and the Soviet  
Union: OPIC, MIGA, and Bilateral Investment Treaties* by Robert S.  
Shanks;

*Tax, Investment, and Financing Issues in Projects in the USSR and  
Eastern Europe* by Richard C. Schneider, Jr.; and

*Technology Transfer Transactions with Soviet and Eastern European  
Enterprises: Experience in USA Companies* by Thomas J. Shillinglaw.

Rabinovich, Pyotr S., *The Procedure for Signing Transactions with  
Soviet Foreign Trade Organizations*, 22 INT'L LAW. 143 (1988).

The author, a former Soviet lawyer and now a partner in a New York  
law firm, discusses the Soviet requirements for the formation of interna-  
tional contracts.

Sheedy, John F. and Richard N. Dean, *Gaining a Foothold in the  
Soviet Market: How to Establish a Representative Office*, 25 INT'L LAW.  
103 (1991).

Opening a representative office in Moscow for many years has been the  
most rewarding means for a foreign business to establish relatively perman-  
ent contacts in the Soviet Union. In this article, the practicalities and  
techniques of opening such representative offices are discussed by two  
members of the international law firm of Coudert Brothers. The discus-  
sion is detailed and thorough. It offers many useful hints, and yet it also  
discusses serious theoretical and policy issues. The value of the article is  
further enhanced by the inclusion of an English translation of the rela-  
tively unknown USSR Council of Ministers Decree of November 30,  
1989 *On Approval of the Statute on the Procedure for the Opening and  
Activity in the USSR of Representative Offices of Foreign Firms, Banks  
and Organizations* as well as a translation of the text of the statute.

STARR, ROBERT AND SALLY MARSH, *PRACTICAL ASPECTS OF  
TRADING WITH THE USSR* (1990) (New York: Worldwide Information,  
150 pp.).

This book describes the conduct of foreign trade in the USSR, including  
contracts, licenses, financing and payment techniques, protection of tech-  
nology transfers and know-hows, export and import controls, local repre-  
sentations and agencies, marketing, insurance, and taxation.

Welt, Leo G.B., *Unconventional Forms of Financing: Buy-Back/Compensation/Barter (Symposium on U.S.-Soviet Military and Economic Relations)* 22 N.Y.U. J. INT'L L. & POL. 461 (1990).

In the context of trade with the Soviet Union, the author examines different forms of financing and trading. The article contains illustrations of actual transactions. It is very interesting and of great practical importance.

### B. Trade Policy and Relations

Hazard, John N., *Opportunities and Problems for Joint Ventures in Soviet Law (Symposium on U.S.-Soviet Military and Economic Relations)* 22 N.Y.U. J. INT'L L. & POL. 407 (1990).

This article looks at the changes in Soviet economic policy toward foreign investors.

THE POPULATION AND LEGAL FRAMEWORK OF TRADE RELATIONS BETWEEN THE EUROPEAN COMMUNITY AND EASTERN EUROPE (M. Maresceav ed. 1989) (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 351 pp.).

A colloquium on trade relations between Eastern Europe and the European Community was held at the Department of European Community Law of the University of Ghent on December 17-18, 1987. This collection of the colloquium papers contains two Soviet contributions:

*General Frames of EEC-CMEA Economic Relations from the Point of View of Perestroika in the USSR* by Alexander Bykov; and  
*The Economic and New Business Environment in the Soviet Market* by Ivan Ivanov.

Stephan, Paul B., III, *The Restructuring of Soviet Commercial Law and Its Impact on International Business Transactions*, 24 GEO. WASH. J. INT'L L. & ECON. 89 (1990).

A careful and thorough survey of Soviet legislative activities in the late 1980s that intended to create, as the author describes on page 89, "a more hospitable climate for private and foreign business relations." The author discusses the problems these new laws create as well as the old barriers they have not removed. In a perceptive conclusion, he warns against half measures that may endanger rather than help the Soviet economy.

Vause, W. Gary, *Perestroika and Market Socialism: The Effects of Communism's Slow Thaw on East-West Economic Relations*, 9 Nw. J. INT'L L. & BUS. 213 (1988).

In this long article, largely focused on the promotion of more extensive trade relations between the United States and the "socialist" countries, the

author also describes the economic reforms in the Soviet Union during the first two years of Gorbachev's rule, the Soviet foreign trade systems, the Soviet joint venture law of January 13, 1987, and other topics related to United States trade with the Soviet Union.

Weizman, Leif, *Western Business Opportunities in the Soviet Union: Perestroikan Prospects*, 15 N.C.J. INT'L L. & COM. REG. 171 (1990).

This article is a general survey of Soviet policies and laws of the late 1980s that focus on the apparent encouragement of foreign trade and investment. The range of the laws examined is remarkably extensive and thorough, and the article is highly informative. The author concludes that the Soviet attempts to promote foreign participation in the development of the Soviet economy are serious and that further efforts may be expected towards the improvement of the legal and other conditions that will make investment in the Soviet Union more attractive. Two addenda discuss the June 1990 decree on taxation of enterprises and joint ventures and the April 1990 decree on taxation of individuals, foreign citizens, and stateless persons.

### C. *Bibliographic Survey*

Kelly, Peter M. and Dale A. Kimball, Jr., *Select Bibliography: Foreign Investment in the Soviet Union, Eastern Europe, and Yugoslavia*, 25 TEX. INT'L L.J. 99 (1990).

## IV. MONETARY SYSTEM AND POLICY

Matyukhin, Georgy, *The Union of Soviet Socialist Republics and Other Socialist Countries in the International Monetary and Financial System*, in *ECONOMIC REFORMS IN CENTRALLY PLANNED ECONOMIES AND THEIR IMPACT ON THE GLOBAL ECONOMY* (J.M. van Brabant ed. 1990) (New York: United Nations) (Published by the United Nations Department of International Economic and Social Affairs as *JOURNAL OF DEVELOPMENT PLANNING* No. 20; UN Classification No. ST/ESA/216; UN Sales No. e.90. II. A.9).

A paper by a senior economist of the USSR Academy of Sciences on the role of money in the socialist economies. The paper also discusses and addresses current interest on the effect of monopoly on source trade, ruble convertibility, and Soviet participation in international financial and monetary activities.

*ECONOMIC REFORMS IN CENTRALLY PLANNED ECONOMIES AND THEIR IMPACT ON THE GLOBAL ECONOMY* (J. van Brabant ed. 1990) (New York: United Nations). (Published by the United Nations Department of International Economic and Social Affairs as *JOURNAL OF DE-*

VELOPMENT PLANNING No. 20. UN Classification No. ST/ESA/216; UN Sales No. e.90. II. A.9).

This compilation contains an article by Georgy Matyukhin entitled *The Union of Soviet Socialist Republics and Other Socialist Countries in the International Monetary and Financial System*.

THE ECONOMY OF THE USSR: A STUDY UNDERTAKEN IN RESPONSE TO A REQUEST BY THE HOUSTON SUMMIT: SUMMARY AND RECOMMENDATIONS (1990) (Washington, D.C.: The World Bank, 51 pp.).

This study of the Soviet economic situation as of 1990 was prepared by the staff of the International Monetary Fund, the World Bank, the Organization for Economic Cooperation and Development, and by consultants of the European Bank for Reconstruction and Development. The findings and conclusions are not overly optimistic. One of the main findings is that the Soviet economy is in deep distress, and its reforms during the first five years of Gorbachev's rule have been aimless and inconsistent. The study also deplores the absence of meaningful legal reform. In this respect it comments on page 34:

The most serious legal problem facing the Soviet economic reform effort is the lack of a general accord concerning the location of authority to legislate, the nature and extent of the legislative and executive powers, and the appropriate bodies and methods for implementation of the law . . . . Some resolution of this conflict, even if temporary and subject to gradual evolution, is clearly required before an economic reform program can be successfully implemented.

On the reform of Soviet economy the study unequivocally recommends an almost total decentralization, the establishment of a market economy and meaningful competition, and private ownership as the first steps in a process that it believes "will be extraordinarily complex and will take many years to complete."

## V. BANKING AND ACCOUNTING

Frenkel, William G., *Growth of Commercial Banking in the USSR*, 9 INT'L FIN. L. REV. 27 (Aug. 1990).

This article is a brief introduction to Soviet banking reforms in 1990.

Glick, Steven M. and Alexei A. Klishin, *Federalist Fever: Economic and Banking Reform in the USSR*, 10 INT'L FIN. L. REV. 32 (Jan. 1991).

This article is a short description of the 1990 reorganization of the Soviet bank system.

Maggs, Peter B., *Joint Enterprises in Relation to Soviet Banking and Finance Law*, 23 COLUM. J. WORLD BUS. 13 (1988).

Maslov, Alexander, *Bankrolling Soviet Joint Ventures*, 4 EUR. AFF. 59 (Autumn 1990).

The Chairman of the Board of Directors of the Moscow Narodny Bank describes in practical terms the role of the Soviet banks in the promotion and formation of joint ventures in the Soviet Union. He also explains the financing practices of the banks. Comparisons are made with similar practices in selected Eastern European countries.

JOINT VENTURE ACCOUNTING IN THE USSR: DIRECTION FOR CHANGE (1990) (New York: United Nations, 46 pp.) (United Nations Centre on Transnational Corporations Advisory Studies, Series B, No. 7; UN Classification No. St/CTC/SER.B/7; UN Sales No. E.90.II.A.26.)

In 1990, the USSR Ministry of Finance and the United Nations Centre on Transnational Corporations created a task force for the modernization of accounting regulations in the USSR. The present report, prepared specifically for the first meeting of the Task Force in June 1990, describes Soviet accounting rules as currently applied to joint ventures, enumerates the problems emerging from the application of such rules, and offers suggestions for change.

## VI. TAXATION

Howell, John M., *Tax in the USSR: The New Joint Venture Legislation*, 15 TAX PLAN. INT'L REV. 7 (Jan. 1988).

Newcity, Michael, *New Soviet Tax on Profits*, 17 TAX PLAN. INT'L REV. 7 (Nov. 1990).

This is a brief note on the June 1990 Soviet Law on Taxes on Enterprises, Associations and Organizations.

Newcity, Michael, *Perestroika, Private Enterprise and Soviet Tax Policy*, 28 COLUM. J. TRANSNAT'L L. 225 (1990).

This is an excellent article on the expected changes in the Soviet tax system by a United States expert on Soviet taxation. The author not only examines the changes in taxation and related matters taking place in the Soviet Union during the late 1980s, but also discusses how realistic and effective these changes can be expected to become. This is an authoritative and highly expert analysis of an important topic that also happens to be vital to the success of Gorbachev's economic reforms.

NEW CITY, MICHAEL, SOVIET TAXATION: STATUTES, REGULATIONS, AND TREATIES (1991) (New York: Dobbs Ferry).



The latest complete analysis of Soviet tax law by the leading American expert on the subject. This looseleaf publication has the additional merit of containing regular updates, which is very important in the rapidly changing area of taxation.

Newcity, Michael, *Tax Issues in Soviet Joint Ventures*, 25 *TEX. INT'L L.J.* 163 (1990).

An excellent article on the Soviet tax laws applicable to joint ventures. The author, who is the leading American expert on Soviet tax law, explains the theoretical underpinnings of the relevant Soviet provisions as well as their practical application. He also discusses the effect of the Law on the Taxes on Enterprises, Associations, and Organizations that was enacted in June 1990 and came into force on January 1, 1991. Detailed references are made to Soviet tax treaties with other countries and to the taxation of sources of income. There is also advice on tax savings and suggestions for special tax planning arrangements.

Newcity, Michael, *Tax Treatment of Soviet Joint Ventures*, 16 *TAX PLAN. INT'L REV.* 15 (Dec. 1989).

Newcity, Michael, *U.S.S.R.: Recent Developments in Soviet Taxation*, 17 *TAX PLAN. INT'L REV.* 44 (June, 1990).

This is a note on tax treatment of Soviet enterprises.

Schneider, Richard C., Jr., *Tax, Investment, and Financing Issues in Projects in the USSR and Eastern Europe*, in *LEGAL ASPECTS OF TRADE AND INVESTMENT IN THE SOVIET UNION AND EASTERN EUROPE* (1990) (Commercial Law and Practice Course Handbook Series No. 549. New York: Practising Law Institute).

## VII. INSURANCE

Afanasyeva, Larisa, *Insurance and Risk Management of Joint Ventures in the USSR (Symposium on U.S.-Soviet Military and Economic Relations)* 22 *N.Y.U. J. INT'L L. & POL.* 447 (1990).

In this article, a Soviet law expert examines an important and academically much neglected aspect of joint ventures.

Frenkel, William G., *Soviet Insurance Market Open to New Business*, 9 *INT'L FIN. L. REV.* 36 (Nov. 1990).

This is a brief description of the insurance industry and its regulation in the USSR.

## VIII. TECHNOLOGY TRANSFERS

Apostolakis, Bobby E., *Technology Transfer to USSR: Exaggerations, Myths, or Utopia?*, 37 RIVISTA INTERNAZIONALE DI SCIENZE ECONOMICHE E COMMERCIALI. 289 (1990).

This analysis of Soviet technology acquisitions from an economist's standpoint concentrates predominantly on the assessment of the econometric benefits of such acquisitions. Nevertheless, the article also contains an interesting historical summary of technology transfers to the Soviet Union, as well as what this reviewer believes to be a useful table of Soviet imports of Western machinery from 1955 through 1985 (reproduced below because this review may not be easily accessible to many readers).

TABLE 1  
Soviet Imports of Western Machinery 1955-1985

YEAR	1	2	3	4	5
1955	104	1.0	38.0		48
1956	139	1.2	30.3		54
1957	128	0.9	27.0		61
1958	123	0.8	24.0		68
1958	177	1.1	33.8		76
1960	310	1.7	38.3	1.39	80
1961	390	1.8	32.2	1.64	89
1962	436	1.8	41.8	1.92	100
1963	402	1.4	37.2	2.22	111
1964	489	1.6	35.8	2.47	124
1965	366	1.1	33.4	2.65	137
1966	395	1.1	31.2	2.78	150
1967	457	1.2	33.7	2.93	163
1968	639	1.6	38.3	3.21	176
1969	889	1.9	39.0	3.66	190
1970	905	1.7	35.0	4.18	208
1971	840	1.4	32.5	4.56	227
1972	1113	1.5	30.0	4.84	246
1973	1566	1.6	27.1	5.24	266
1974	2100	1.7	26.9	5.63	289
1975	4000	2.4	25.4		313
1976	4759	2.3	25.0		
1977	5070	2.1	24.1		
1978	6375	1.9	23.7		
1979	6927	1.7	23.1		
1980	8058	1.6	22.5		
1981	8219	1.5	21.4		
1982	8411	1.7	20.6		
1983	8111	1.4	20.0		
1984	7644	1.2	19.2		
1985	6116	1.1	18.4		

Column 1: Imports of western machinery in US \$m, f.o.b., current prices. Column 2: Machinery imports as per cent of domestic machinery investment of the following year. Column 3: Column 1 as % of all imports (f.o.b.) from the West. Column 4: Estimated

stock of foreign machinery, 1960-1974, in billion of 1966 Rubles. Stock in place on January 1 of the year. Column 5: Total Soviet capital stock, 1955-75, in billion of 1966 Rubles.

SOURCES: Columns 1, 2: 1955-75 in HANSON (1977-78); 1976-85 from our calculations from U.N., Statistical Yearbook and IMF, Direction of Trade Statistics. Column 3: 1955-73 in HANSON (1975); 1974-85 from our calculations. Column 4: GREEN and LEVINE (1977-78). Column 5: 1955-59 from our calculations; 1955-59 from our calculations; 1955-75 in WEITZMAN (1979).

Shillinglaw, Thomas J., *Technology Transfer Transactions with Soviet and Eastern European Enterprises: Experience in USA Companies*, in LEGAL ASPECTS OF TRADE AND INVESTMENT IN THE SOVIET UNION AND EASTERN EUROPE (1990) (Commercial Law and Practice Course Handbook Series No. 549. New York: Practising Law Institute).

WESTBROOK, CHRISTINE AND ALAN B. SHERR, U.S.-SOVIET JOINT VENTURES AND EXPORT CONTROL POLICY (1990) (Providence: Centre for Foreign Policy Development, Brown University). (Briefing Paper No. 3).

In this incisive paper, the authors examine inclusion of technology transfers in Soviet-United States joint ventures and the compliance of such transfers with the United States restrictions on the licensing of high technology to such countries as the USSR.