Western Opportunities for Investment in the Oil Industry of the Former Soviet Union

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INTRODUCTION

As recently as 1988, the Soviet Union produced 20.6% of total world oil output, making it the world's largest oil producer. In that same year, exports of both oil and gas accounted for eighty percent of the Soviet Union's hard currency exports to the West. With a reported ten percent decline in gross national product for the first half of 1991, the Soviets desperately need hard currency to strengthen their collapsing economy. Unfortunately, the percentage of hard currency obtained from oil exports to the West has also sharply declined. Soviet oil pro-

* This Comment addresses Western business opportunities in the oil industry of the former Soviet Union. While recent political events have shifted power from Moscow to the governments of the newly independent states, many of the problems that hindered Western investment in the Soviet oil industry prior to the dissolution of the Soviet Union persist today. For example, the "war of laws" that once existed between republican and Soviet authorities endures between the members of the Commonwealth of Independent States and local regions within these member-states, both of which are vying for control of mineral rich areas. Moreover, many of the operational and financial concerns addressed in this Comment, such as registration, procurement of supplies, transfer of technology, protection of intellectual property, labor, taxes and currency, continue to raise barriers to investment. Thus, the issues and conclusions presented remain both timely and valid.


5. See EIU REPORT ON THE SOVIET UNION, supra note 4, at 27 (reporting a 9 percent drop in Soviet oil and gas production in the first quarter of 1991 relative to production in the first quarter of 1990); see also Kovski, Soviet Potential Lingers Despite Current Upheaval, OIL & MONEY INT'L, May 13, 1991, at 1 (reporting that Soviet officials expect a 50 percent decline in oil exports in 1991). But see Lelyveld, Oil
Production dropped from 12.48 million barrels per day in 1987, to less than ten million barrels per day in December 1991. Likewise, oil exports declined by thirty-three percent in 1991. This drop in production resulted from, among other causes, increased production costs, deteriorating equipment, a failing infrastructure, ethnic strife, and exports may finance import rise for USSR. J. of Commerce, Aug. 6, 1991, at 1 [hereinafter Oil Exports May Finance Import Rise] (declaring that Soviet oil exports for the first half of 1991 actually fell only 25 percent compared to the first half of 1990, rather than the 50 percent drop reported by Soviet officials). This miscalculation on the part of Soviet officials is blamed, in part, on recent shifts in control over Soviet oil production. Id. Once the exclusive domain of the Soviet oil ministry, control of oil production is now shared with the various republics. Id. Nevertheless, this 25 percent decline in oil exports is a dramatic acceleration from the 12 percent decline experienced in 1989. The Catastrophe of the Soviet Economy, supra note 4, at 57.

6. 20,000 Soviet Wells Reported to be Idle, OIL & GAS J., July 29, 1991, at 38 [hereinafter 20,000 Soviet Wells].


8. Tanner, Former Soviet Union's Oil Woes Unlikely to Hurt Exports as Much as Expected, Wall. St. J., Jan. 9, 1992, at A2. See Oil Exports May Finance Import Rise, supra note 5, at 1 (reporting a 50 percent drop in oil exports for the first half of 1991); see also The Domestic Economy, EIU REPORT ON THE SOVIET UNION, supra note 4, at 27 (stating that oil production for the first quarter of 1991 was the lowest quarterly output in fifteen years).

9. See 20,000 Soviet Wells, supra note 6, at 38 (asserting that the drop in oil production is a product of the Soviet government's recent emphasis on consumer goods manufacturing rather than energy production); see also Russia: Gasping for Breath, Choking in Waste, Dying Young, Wash. Post, Aug. 18, 1991, at C3 (reporting that millions of barrels of petroleum are lost each year in the Soviet Union because of accidents that occur during the extraction and transportation of oil).

10. See The Future of Soviet Oil, supra note 1, at 145 (stating that increases in the costs of production result from the unfavorable location and complexity of fields currently being exploited).

11. See Ebel, Can Soviet Oil Save Gorbachev?, INT'L ECON., Oct.-Nov. 1990, at 45, 46 [hereinafter Can Soviet Oil Save Gorbachev?] (explaining that wells stand idle because of poor construction, infrequent inspections, and shortages of spare parts); see also 20,000 Soviet Wells, supra note 6, at 38 (discussing a Scottish report on the Soviet oil and gas industry that estimates that 20,000 productive Soviet wells are idle due to lack of equipment or unreliable equipment).

12. See Catastrophe of the Soviet Economy, supra note 4, at 57 (stating that the failure to provide much needed repairs to the Soviet railroad seriously endangers continued oil production).

13. See Can Soviet Oil Save Gorbachev?, supra note 11, at 46 (stating that ethnic unrest in the Armenian capital of Baku, the nation's center for the manufacture of oil field equipment, disrupted oil production).
outdated technology. Thus, commentators have recognized that the Soviet Union's future ability to increase oil exports to the West, and to generate the needed influx of hard currency, requires drastic reform of the country's oil industry. One such avenue of reform is the establishment of joint projects with Western companies in order to enhance the development of the Soviet Union's oil reserves.

Foreign companies appear eager to invest in the oil industry of the Soviet Union because of the potential for reaping enormous profits. First, the Soviet Union may possess the world's largest oil reserves. Secondly, because the Soviets have confirmed the existence of oil, foreign oil investors avoid the usual exploration costs. Thus, Western


15. See supra notes 1-4 and accompanying text (explaining the predominate role oil exports play in the Soviet Union's hard currency earning potential); see also EIU REPORT ON THE SOVIET UNION, supra note 4, at 32 (reporting that for the first quarter of 1991, exports to the developed West from which hard currency could be derived fell by 10.7 percent); The Future of Soviet Oil, supra note 1, at 138 (asserting that the volume and value of oil that the Soviet Union exports is the single most important determinant of the country's ability to participate in the international economy); Note, The New Soviet Joint Venture Law: Analysis, Issues, and Approaches for the American Investor, 19 LAW & POL'Y INT'L BUS. 851, 856-60 (1987) [hereinafter Note, The New Soviet Joint Venture Law] (contending that, through the establishment of joint ventures with American businesses, the Soviet Union hopes to encourage the United States to abandon its persistent opposition to Soviet accession to the General Agreement on Tariffs and Trade).

16. See T. Gustafson, Crisis Amid Plenty: The Politics of Soviet Energy Under Brezhnev and Gorbachev 334-35 (1989) (asserting that reform of the energy sector should be one of the least controversial tasks of Soviet officials during the present period of political transformation). Gustafson argues that the relatively modest technological demands of oil production make it possible for the Soviet Union to rapidly become a major world player in the world's energy markets. Id. at 334. Additionally, because oil production is fueled by large, capital-intensive entities, there is little chance that local communities will attempt to interfere with production operations. Id. at 335. Finally, expansion of the energy sector is compatible with Gorbachev's reform schemes and will become more efficient as other areas of the economy develop. Id.


18. See Potts, Clearing Brush on the Soviet Oil Frontier, Wash. Post, Feb. 10, 1991, at H1 [hereinafter Clearing Brush on the Soviet Oil Frontier] (reporting that despite the political uncertainty within the Soviet Union, Western oil companies are willing to invest billions of dollars in the Soviet oil industry in return for economic rights in up to half of all the oil produced).

19. See id. (stating that the Soviet Union possesses twice the amount of known oil reserves held by the United States and possibly more than Saudi Arabia).

20. See id. (citing Total Petroleum of France and the American White Nights venture, made up of Phibro Energy Inc. and Anglo Suisse, as two Western oil companies
companies can anticipate producing large quantities of oil at low costs, thereby reaping immense and immediate returns on their investment.\textsuperscript{22}

However, the small number of currently operating oil projects\textsuperscript{23} has encountered prohibitive obstacles in establishing joint enterprises. Political obstacles, such as the struggle between republican officials, as well as regional and local officials, over ownership and control of oil located on their respective territories discourage many would-be investors.\textsuperscript{24} In addition, not all Soviets look favorably upon Western assistance in the development of the Soviet oil industry.\textsuperscript{25} Many criticize what they con-

which are scheduled to begin oil production in the Soviet Union in 1991); see also Canadian, U.S. Firms Form Soviet Ventures, OIL & Gas J., July 29, 1991, at 40 (reporting that PanCanadian Petroleum Ltd. and Canadian Fracmaster Ltd. established a joint oil production venture operating in Siberia) [hereinafter Canadian, U.S. Firms].


22. See id. (explaining that companies will save billions of dollars and years of time by avoiding the exploration and development operations that typically precede petroleum production).

23. See Soviet Tax Maze Latest Source of Investor Anxiety, Petroleum Intelligence Wkly., Apr. 22, 1991, at 8 (reporting that the only foreign companies currently producing Soviet oil are Phibro and Anglo Suisse of the United States through the White Nights joint venture, and Royal Dutch-Shell and Fracmaster of Canada through the Uganskfracmaster joint venture) [hereinafter Soviet Tax Maze]; see also Canadian, U.S. Firms, supra note 20, at 40 (reporting two new Soviet joint ventures in Siberia, one with Canada's PanCanadian Petroleum Ltd. and the other with Fairfield Industries Inc. of Houston); U.S. Delegation to Visit Soviet Union to Clear Hurdles to Oil Exploration, Int'l Trade Rep. (BNA) No. 26, at 977, 977 (June 26, 1991) (reciting an estimate by the Department of Commerce that ten to twenty Western oil companies are currently negotiating with Soviet authorities for potential oil production) [hereinafter U.S. Delegation to Visit Soviet Union]; Rich Soviet Promise Keeps Foreign Firms on Investment Track, Petroleum Intelligence Wkly., Jan. 28, 1991, at 3, 3-4 (stating that the Total Company of France hopes to be producing by end of 1991, and that France is planning seven more joint-venture agreements to be signed by the middle of that same year.

24. Trouble in Barrels, supra note 7, at 84; see Medvedev, Yeltsin and His 'Little' Russia; Why Is Moscow Cheering a Historic Loss?, Wash. Post, Jan. 12, 1992, at C1, C2 (arguing that granting autonomy to Chechen-Irquish with its large oil refinery complex, or to Bashkiria and Tatarstan, the main centers for the petro-chemical industry of the former Soviet Union, all three of which are located in the Russian republic, threaten the very creation of a market economy in the Commonwealth) [hereinafter Yeltsin's Little Russia]; U.S. Delegation to Visit Soviet Union, supra note 23, at 977 (reporting that Eugene McAllister, Assistant Secretary of State for Economic and Business Affairs, believes that until the Soviet Union and its constituent republics reach an agreement on the ownership of oil, foreign companies will be reluctant to invest in Soviet joint ventures); see also U.S. Joint Ventures and the Soviet Energy Crisis Soviet Observer, Apr. 1991, at 1, 8 (stating that the United States Department of State is hoping for an "all-Union treaty" defining ownership and property rights between the republics and the central government) [hereinafter U.S. Joint Ventures].

25. See Soviet Oil Industry Woes May Extend Crisis, OIL & Gas J., June 3, 1991, at 65 (noting that hard-line Communist newspapers and Soviet officials expressed their opposition to the influx of Western capital to the Soviet Union) [hereinafter Soviet Oil Industry Woes].
sider to be the "capitalist exploitation" of the nation's oil, while others find it unconscionable to permit exports of Soviet oil when domestic energy supplies are low.

Legal obstacles also encumber potential investment. Frequent changes and amendments to joint venture legislation, as well as the ambiguous nature of existing Soviet laws, unnerve potential investors. In addition, Soviet legislation fails to address many relevant issues relating to foreign investment, such as procurement arrangements and repatriation of profits.

This Comment examines Soviet legislation relevant to foreign investment in the Soviet oil industry. Part I examines the possible legal frameworks upon which investment can be based. Part II discusses the problems associated with assertions of autonomy at the union and republican levels, and legislation regarding resource ownership. Part III addresses operational concerns facing potential oil investors. Part IV looks at financial concerns, namely Soviet taxes and currency issues. Part V examines recent political developments and their impact on Western investment in the Soviet oil industry. The Comment concludes by advising Western companies, Western governments, and the Union

26. Id.
27. The Future of Soviet Oil, supra note 1, at 156. Much of the opposition to oil exports stems from the fact that local communities see little direct benefit from the exports. Id. at 157. Therefore, commentators suggest that Western investors work to secure some direct benefits for the local population as well as demonstrating concern for the environment. Id.
28. See Soviet Tax Maze, supra note 23, at 3 (predicting that repealed alterations in Soviet export tax will deter potential foreign investors). But see Saliman, An Analysis of the Changing Legal Environment in the USSR for Foreign Investment, 22 LAW & POL'Y INT'L BUS. 1, 3 (1991) (stating that Decree 49, the joint venture decree, has been amended several times to clarify textual ambiguities and thus attract foreign investment) [hereinafter Changing Legal Environment in the USSR].
29. See Changing Legal Environment in the USSR, supra note 28, at 5 (attributing the ambiguity of Soviet legislation to the ideological and practical constraints placed on Soviet lawmakers). Saliman cites two reasons why adopting capitalist principles must be subtle and gradual. Id. at 6. First, many planners still cling to Marxist-Leninist principles. Id. Second, on a practical level, planners, managers, and lawyers lack the experience with and understanding of Western economic systems. Id.
30. See U.S. Joint Ventures, supra note 24, at 8 (discussing the absence of legislation defining the economic relationship between Moscow and the republics); see also U.S. Delegation to Visit Soviet Union, supra note 23, at 977 (stating the hope that an arrangement will be established so that foreign investment can proceed while legislation concerning the ownership of natural resources between the central government and the republics is still being formulated); Note, A New Era for Foreign Investment in the U.S.S.R., 1 SOVIET & E. EUR. L. 1, 11 (Nov. 1990) (declaring that although the presidential Decree on Foreign Investment in the Soviet Union of October 1990 permits the establishment of 100 percent foreign investment enterprises, the rules and procedures governing the operation of these enterprises have not yet been written) [hereinafter A New Era for Foreign Investment].
and republican governments of the Soviet Union to take bold steps to facilitate increased Western investment in the nation's oil industry.

I. LEGAL FRAMEWORKS

For the interested Westerner, investing in the Soviet oil industry presents many challenges. Of primary importance is the task of selecting the type of agreement around which the partnership shall be formed. Although foreign investment in Soviet oil can be structured many ways, some of which will be discussed below, the joint venture is most common.

A. JOINT VENTURES

Even before the Gorbachev era, Soviet laws permitted joint ventures. In order to adapt to a radically changing political and economic environment, however, Soviet joint ventures were reactivated and their scope broadened. With the advent of the Joint Venture Decree of

31. See Hazard, Comment, 1 Soviet & E. Eur. L. 5 (May 1990) (commenting on a debate that ensued at a conference in April 1990 between Soviet jurists and Italian advisors, at which the Soviets favored detailed provisions for each type of company and association versus a general rule covering all types of business organizations).


34. See M. Boguslavsky & P. Smirnov, The Reorganization of Soviet Foreign Trade: Legal Aspects 81 (1989) (explaining that Soviet organizations have participated in joint ventures since the 1920s); see also New Soviet Joint Venture Law, supra note 32, at 473 (stating that the Soviets canceled all joint ventures in 1930). Although joint ventures were rejected as ideologically unacceptable, foreign investment nonetheless took place in the Soviet Union through Industrial Cooperation Agreements (ICAs). Id. These ICA enterprises included Pepsi-Cola and Occidental Petroleum. Id. at 474.

35. M. Boguslavsky & P. Smirnov, supra note 34, at 81.
Western enthusiasm about investment in Soviet enterprises burgeoned. The 1987 *Joint Venture Decree*, while evidence of a major advance in Soviet economic and legal development, created numerous disincentives for the potential Western investor. Two provisions mandated the predominate role of the Soviet partner. First, the Soviet partner had to own at least a fifty-one percent share in the charter capital of the joint enterprise. Second, both the Chairman of the Board and the Director-General, the two top management positions of the joint venture, were required to be citizens of the U.S.S.R.

The 1987 law also imposed heavy taxes on the joint venture, particularly the foreign partner. After the first two years of profitable operation, the joint venture was subject to a thirty percent profit tax. A forty percent export tax served as a major disincentive for Western oil companies who planned to sell their share of oil production on the in-

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36. *Decree of the USSR Council of Ministers on the Establishment in the Territory of the USSR and Operation of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries* (13 January 1987, No. 49, as amended by Decrees No. 352 on March 17, 1988 and No. 385 on May 6, 1989), SP SSSR No. 49 (1987), reprinted in 2 PARKER SCH. FOREIGN & COMP. L., USSR Legal Materials 1 (V. Pechota & P. Pettibone) [hereinafter DECREE 49]. See *New Soviet Joint Venture Law*, supra note 32, at 478-79 (contending that the Soviet joint venture Edict is a product of changes in Soviet objectives and was enacted with the intention of abandoning old Soviet attitudes to foreign economic activity, advancing industrial modernization, and supplying hard currency to the Soviet economy). These goals are typical of East European joint venture laws as stated by the Rumanian joint venture law which includes similar objectives. Id. The Rumanian law promotes the objectives of modernization of industry, diversification of exports, introduction of new technology, improvement of the technical quality of goods and services, advancement of research, and the introduction of modern managerial methods. Id. at 478 n.60.

37. See Potter, *Ouster May Chill Western Investments*, Wash. Post, Aug. 20, 1991, at C11 (stating that there are approximately 2,000 Soviet joint ventures with Western firms, totaling $3.2 billion). Of the 2,000 Soviet joint ventures, United States companies are involved in only approximately 12%. Id.


41. See Western Business Opportunities, supra note 38, at 195 (explaining the tax structure of the Soviet Union). Prior to 1978, the Soviet Union generally did not tax foreign entities. Id. Under Decree 313, adopted in 1978 by the Ministry of Finance, foreign legal entities were subjected to a 40 percent tax on income derived from economic activity in the Soviet Union. Id.

42. See M. BOGUSLAVSKY & P. SMIRNOV, supra note 34, at 101 (explaining that a 30 percent tax was to be taken from that portion of profits remaining after payments had been made to the reserve and development funds).
ternational market. In addition, the Soviets imposed a twenty percent tax on the Western partner's share of profits upon repatriation. While the Soviets enacted this provision with the hope of stimulating reinvestment of Western profits back into their failing economy, it soon became apparent that this tax measure caused many potential foreign investors to delay their investment plans and await new, more favorable tax provisions.

Due to worsening economic conditions and the acknowledgment that foreign participation was needed to revitalize the economy, the Soviets amended their joint venture laws on March 17, 1988 and again on May 6, 1989. These amendments created more favorable conditions for potential Western investment. For example, Soviet partners are no longer required to hold a majority share in the charter capital of the joint enterprise. Instead, the parties determine by agreement the percentage of charter capital owned by the foreign participant. As a further concession to Western businesses, a foreign citizen may now hold a position in the enterprise as either the Chairman of the Board or the Director-General, provided a Soviet citizen holds at least one of these positions.

43. See Burt, Soviet Ventures Require Careful Structuring, OIL & GAS J., June 3, 1991 at 78, 80 (remarking that Soviet export taxes have frustrated many potential Western investors whose returns depend on the export of oil) [hereinafter Soviet Ventures].
44. Decree 49, supra note 36, at art. IV, § 41.
45. See Why Soviet Oil Wells Won't Be Gushing Soon, BUS. WEEK, Sept. 9, 1991, at 38 (asserting that Western oil companies will remain hesitant to make huge investments until the Soviet laws regarding the repatriation of profits are resolved by the central and republican governments) [hereinafter Why Soviet Oil Wells Won't Be Gushing Soon].
47. See Changing Legal Environment in the USSR, supra note 28, at 3 (stating that Decree 49 has been amended several times, in part to create a more favorable climate for the foreign investor).
48. See Decree 49, supra note 36 (explaining that the intent of the Decree was to further develop international trade and cooperation with capitalist and developing countries); see also Soviet Efforts to Attract Foreign E & P Investment, supra note 33, at 179 (stating that more than a few Soviets criticize the joint venture law for being too favorable to the foreign partner).
49. Decree 49, supra note 36, at art. II, § 5; see Western Business Opportunities, supra note 38, at 181 (determining that this amendment permits foreign participants to own up to 99 percent of the shares in the joint venture).
The amendments also created more favorable tax provisions for the Western partner. While tax on a foreigner's repatriated profits remains twenty percent, a new provision authorizes the U.S.S.R. Ministry of Finances to reduce the tax, or completely exempt the foreign participant from the tax for a specified period. In addition, a new provision modifies the two year tax exemption on profits of the joint enterprise. Under previous law, a joint venture was exempt from profit tax during the first two years of operation. With the amended joint venture law, the two-year exemption activates at the moment of declared profits.

Another question arises in valuation of the capital contribution of each partner. In joint ventures for the production of oil, the Soviet partner normally provides buildings, employees, and proven oil reserves, while the Western partner supplies modern equipment, advanced technology, and managerial skills. Determining the value of intangible assets such as managerial skills and technology, creates difficulties. In addition, because the ruble is not a convertible currency, reaching an agreement on the value of even tangible capital contribu-

51. See Soviet Tax Maze, supra note 23, at 3 (contending that changes in Soviet tax legislation, although beneficial, could prove unnerving if viewed by the potential investor as one more example of the constant flux in Soviet business law).
52. Decree 49, supra note 36, art. VI, § 41.
53. Id.
54. Decree 49, supra note 36, at art. IV, § 36.
55. Id.
56. Id.
57. See Soviet Efforts to Attract Foreign E & P Investment, supra note 33, at 179 (stating that republican associations joining joint ventures have demanded that all association employees be employed by the joint venture and included as part of the association's capital contribution). The author explains that this threatens to perpetuate the traditional Soviet problem of overstaffing. Id. But see Decree 49, supra note 36, at art. II, § 11 (omitting employees from the list of assets that may be contributed to the charter fund of a joint enterprise).
58. See Procedures for Assessing the Land, Natural Resources, Buildings and Structures Forming Part of the Soviet Partner's Contribution to the Authorized Capital of Joint Ventures, of February 4, 1988 (adopted jointly by the USSR State Committee for Prices, USSR State Planning Committee, Ministry of Finance, Ministry of Foreign Trade, and USSR State Committee for External Economic Relations), reprinted in, 2 Parker Sch. Foreign & Comp. L., USSR Legal Materials 1, art. II (V. Pechota & P. Pettibone 1991) (asserting that the assessment of minerals made available to the joint venture by the Soviet party shall not be included in the fixed assets of the joint venture) [hereinafter Soviet Ventures].
59. See New Soviet Joint Venture Law, supra note 32, at 478 (asserting that Western technology and Western managerial skills are required to fulfill the Soviet goal of industrial modernization).
tions can be problematic. The joint venture law provides little assistance in this regard. The law provides that the Soviet partner's assets shall be valued in both Soviet and foreign currency, according to contract prices and taking world market prices into account. The law further stipulates that the foreign partner's contribution shall be valued in the same manner and the value shall be converted into rubles according to the official exchange rate of the State Bank of the U.S.S.R.

B. JOINT STOCK COMPANY

Another possible legal framework for foreign investment in the Soviet oil industry is the joint stock company. A Soviet resolution entitled Regulation on Joint-Stock Companies and Limited Liability Companies (Resolution 590), regulates the operation of joint stock companies in the Soviet Union. This resolution provides for the transformation of state-owned entities into shareholding corporations very similar to U.S. corporations. As of 1991, no foreign-owned joint stock companies have been established in the geology and energy industries.
less, if a large-scale petroleum entity reorganizes into a joint stock company, the Soviet state may continue to participate through the ownership of equity in the shareholding corporation.69

Lack of uniformity in the laws of the central government and the Russian republic create uncertainty for Western investors.70 Resolution 59071 states that the formation of a joint-stock company shall be governed by the conditions for economic activity established by the legislation of the Union and the Autonomous Republics.72 Consequently, the Russian Republic established its own version of Resolution 590 in December 1990 with the enactment of Regulations on Stock Associations.73 The Russian law differs from its Soviet counterpart.74 It lowers the start-up charter capital to only 100,000 rubles,75 from 500,000 rubles required under Soviet law.76 In addition, the Russian law requires only one founder to form the joint stock company,77 as opposed to the Soviet law which requires two.78 Due to the provision in Soviet law which grants control over the establishment of joint stock companies to local governments,79 companies organized on Russian territory are ad-

69. See id. (stating that existing legislation regards authority over oil and gas to have been delegated to the central government by the republics); see also Law on Ownership in the U.S.S.R. of March 6, 1990, Ved. Verkh. Sov. SSSR No. 11, Item 164, (1990), reprinted in, 1 PARKER SCH. FOREIGN & COMP. L., USSR Legal Materials 1 (V. Pechota & P. Pettibone 1991) (asserting that the U.S.S.R has "possession and use of parcels of land and other natural facilities granted in order to ensure the activity of . . . U.S.S.R. integrated power system").

70. See Frenkel, Soviet and Russian Company Laws: A Comparison, 2 SOVIET & E. EUR. L. 10 (Mar. 1991) (explaining that Soviet and Russian company laws differ in the corporate forms recognized, the capitalization and formation requirements, and in governing structures) [hereinafter Soviet and Russian Company Laws].

71. REGULATION ON JOINT-STOCK COMPANIES, supra note 66, at art. I, §1.

72. Id. This law, however, goes on to point out that conditions with regard to foreign participation in a joint stock company shall be governed by the legislative acts of the republics and the central government. Id. §2.

73. See Soviet and Russian Company Laws, supra note 70, at 10 (explaining how Russian law on joint stock companies is more liberal and much more specific than its Soviet counterpart); see also Patterson, Putting the Laws into Practice, 2 SOVIET & E. EUR. L. 10, 10 (Mar. 1991) (stating that the Russia's Decree 601 attempts to make registration less burdensome by reducing the number of documents required to register a joint stock company and sets mandatory deadlines for registration).

74. See Soviet Ventures, supra note 43, at 80 (claiming that during the late 1990's the Russian Federation took the position that its laws prevailed over Soviet laws and consequently, the Russian Federation began passing laws devised to accelerate the transition to a market economy).

75. Soviet and Russian Company Laws, supra note 70, at 10.

76. REGULATIONS ON JOINT-STOCK COMPANIES, supra note 66, at art. 88, §30.

77. Soviet and Russian Company Laws, supra note 70, at 10.

78. REGULATION ON JOINT-STOCK COMPANIES, supra note 66, at art. I, §3.

79. Id. at art. I, §1.
vised to register first under Russian law, while simultaneously trying to comply with Soviet law.  

C. ONE HUNDRED PERCENT FOREIGN INVESTMENT

Yet another framework for foreign development in the Soviet oil industry is the one hundred percent foreign investment enterprise. This is now possible under the Decree of the President of the U.S.S.R. on Foreign Investment in the U.S.S.R. The stated intent of the decree is to attract foreign financial resources, technology, and management experience in the form of foreign investment. The decree provides that profits earned in Soviet currency may be freely reinvested in the U.S.S.R. or transferred abroad. Consistent with other laws on foreign investment, the decree stipulates that the economic activity of Soviet enterprises with foreign investment shall be determined by the legislation of both the U.S.S.R. and the individual republics.

80. See Soviet and Russian Company Laws, supra note 70, at 10 (noting that full compliance with both laws may be impossible since the two laws may be impossible to harmonize). Id.

81. See Soviet Ventures, supra note 43, at 78 (stating that President Gorbachev promulgated this decree to attract further Western investment); see also A New Era for Foreign Investment, supra note 30, at 2 (asserting that 100 percent foreign investment is favorable only for businesses that do not require major assets or are not highly dependent on Soviet resources, or which offer a broad mix of products, thus seemingly excluding the oil and gas industry).

82. Decree of the President of the USSR on Foreign Investment in the USSR, (1990), reprinted in, 1 PARKER SCH. FOREIGN & COMP. L. U.S.S.R. Legal Materials 1 (V. Pechota & P. Pettibone 1991). See Soviet Ventures, supra note 43, at 78 (commenting that no implementing rules were issued, making the procedures for this type of enterprise unknown) [hereinafter DECREE ON FOREIGN INVESTMENT]; see also A New Era for Foreign Investment, supra note 30, at 1 (pointing out that a second decree providing a new commercial exchange rate to be used in foreign trade was introduced on the same day, and that these two decrees enhance the Soviet commitment to accelerate and encourage foreign investment).

83. DECREE ON FOREIGN INVESTMENT, supra note 82, preamble.

84. DECREE ON FOREIGN INVESTMENT, supra note 82, § 4. See A New Era for Foreign Investment, supra note 30, at 2 (stating that this Decree permits foreign investors to invest ruble profits in other Soviet ventures).

85. DECREE ON FOREIGN INVESTMENT, supra note 82, § 1; see A New Era for Foreign Investment, supra note 30, at 11 (arguing that the uncertainties which this language produces are minimal due to the fact that most of the R.S.F.S.R. legislation on foreign investment to date does not conflict with the laws of the U.S.S.R.); see also Soviet Ventures, supra note 43, at 78-80 (indicating that although 100 percent foreign investment is a viable option for potential foreign investors, there is no specific Soviet legal regulation governing them).
II. ASSERTIONS OF AUTONOMY

A significant barrier to investment in the Soviet oil industry is the political instability arising from bids for autonomy by various national groups. Because the oil industry is the largest source of hard currency revenue, the central government considers control of oil reserves to be vital to the Union. Due to the fact that over ninety percent of Soviet oil production occurs in the Russian republic, the Russians have demanded control of, and revenues from, the exploitation of oil reserves located on their territory. This battle for control of local oil reserves is not limited to disputes between the Russian republic and the central government. Smaller units, such as autonomous republics and territories, which are endowed with oil resources, assert similar rights.

86. See Kovski, Soviet Potential Lingers Despite Current Upheaval, OIL AND MONEY INT'L, May 13, 1991, at B1, B3 (quoting oil experts on the political tension between the Central Government, the Ministry of Oil and Gas, and the regional production associations) [hereinafter Soviet Potential]. Matthew Sagers, Director of Energy Services at the Washington-based consulting company Plan-Econ Inc., nonetheless, contends that investment difficulties resulting from the battle between the central government and the republics are of a transitional rather than a long term nature. Id.; see also Soviet Oil Industry Woes, supra note 25, at 70 (referring to a report which credits ethnic unrest in the republic of Azerbaijan, which produces 60% of all Soviet oil equipment, for preventing the drilling of 1,500 Soviet wells due to a lack of equipment).

87. See supra note 2 and accompanying text (describing the role of oil in the nation's supply of hard currency).

88. See The Future of Soviet Oil, supra note 1, at 157 (explaining that the ambiguous nature of recent laws regarding the division of powers between the republics and the central government, such as the draft Union Treaty of November 1990, indicates that the central government wants to retain strong influence over energy exports).

89. Id. (citing Narkhoz SSSR, Narodnoye Khозяйството SSSR 1989 [National Economy of the U.S.S.R. 1989], 1990, at 338); see Clearing Brush on the Soviet Oil Frontier, supra note 18, at H5 (stating that 80 to 90% of known oil reserves are located in the Russian republic).

90. See The Future of Soviet Oil, supra note 1, at 157 (pointing out that Russians feel they get inadequate compensation under the present economic structure of the Soviet Union).

91. See Moslems in Clash Over Rights to Oil, Fin. Times, Apr. 23, 1991, at 3 (reporting that thousands of Moslems in the republic of Tataria demonstrated for regional autonomy and carried flags which read, "Tatar oil for Tataria"); see also The Future of Soviet Oil, supra note 1, at 157 (stating that local assertions of control over oil reserves occur most prevalently in Western Siberia where much of Soviet oil production takes place). Moe contends that local entities consider direct dealings with foreign oil companies as a means of obtaining investment in their social infrastructure. Id. at 158. See Cheeseright, Midlands Boost Soviet Region in Barter Deals, Fin. Times, May 1, 1991, at 5 (reporting that in a barter deal between the British company Orbicom and the Soviet company Neftekhimkombinat, based in the city of Tobolsk, the Soviets are supplying a series of propane gas shipments in return for a maternity hospital in Tobolsk and one million dollars worth of vehicles and parts for the city's police force); Soviet Oil Industry Woes, supra note 25, at 68 (quoting the chairman of the central council of the oil and gas production workers' trade unions as stating that
Existing legislation concerning ownership does little to ease the situation. While asserting that natural resources are the inalienable property of the peoples living on the given territory, the Law on Ownership in the U.S.S.R. grants possession and use of the land and natural resources required to ensure the activity of U.S.S.R. organs of power and management to the central government. Furthermore, this ownership law designates the U.S.S.R. integrated power system as the property of the central government.

Western investors have anxiously awaited the enactment of a new Union Treaty which they hope will define the economic and legal relationship between the central government and the republics and, thus, create a more stable environment for foreign investment. A draft of the new Union Treaty submitted to the republics for consideration, however, fails to clarify whether the Union will maintain control over the export of oil. Although the draft provides that the Union government and the republics will jointly control "energy planning," a further provision grants rights over land and resources to the republics.

In addition, the draft fails to address the degree to which foreign investors must continue to negotiate with the central government. While the Union and republics are accorded joint jurisdiction over the creation of foreign economic policies, the Union retains exclusive power to implement these policies. Thus, because the draft of the new Union treaty does little to alleviate confusion for foreign investors, Western companies are advised to consummate agreements with na-

the shortage of food for petroleum industry personnel working in the western Siberia oil fields is creating an explosive situation).

92. Law on Ownership, supra note 69.

93. Law on Ownership, supra note 69, at art. 20, § 1.

94. Law on Ownership, supra note 69, at art. 20, § 2. See Hanson, Property Rights in the New Phase of Reforms, 6 Soviet Econ. 95, 103 (1990) (stating that these two seemingly conflicting provisions are the result of a compromise between federal and republic claims and beg the question of what constitutes a necessary federal function).

95. Law on Ownership, supra note 69, at art. 21.

96. See Murray, The Union Treaty: An Incentive to Invest?, 2 Soviet & E. Eur. L. 10, 10 (July 1991) (stating that Western investors have looked forward to the treaty as a means of ending the war of laws between the central and republican governments).

97. Id. The draft of the Union Treaty, while embodying concepts which might enable the republics to operate independently in the world economy, fails to establish the predictable legal environment essential to investors. Id. at 11.

98. See id. at 10-11 (noting the central government's grant of most powers over resources to the republics and questioning whether it has also released control over oil exports).

99. Id. at 11.

100. Id.

101. Id.
tional, regional, and local authorities in order to reduce the possibility of future problems.

III. OPERATIONAL CONCERNS

A. Registering a Joint Oil Enterprise

All joint oil ventures in the Soviet Union are subject to registration. In order for a joint oil venture to register, the appropriate regional Council of Ministers, through a governmental decree, must approve enterprises with foreign participation. To obtain this decree, the foreign and Soviet partners must first draft an agreement. Next, the republican Council of Ministers who preside over the republic in which the oil deposit is located must approve the agreement. Finally, the agreement is conveyed to the state mining supervisory committees and the Council of Ministers which approve and issue the decree. Once the decree is obtained, the joint venture can register with the republic Ministry of Finance.

Registration requires a participant's written application along with copies of the decree and the articles of establishment.

102. See Turkmen Lease Terms Improved, Model Contract to Come, OIL & GAS J., June 3, 1991, at 108 (reporting that the Turkmen republic, which is inviting bids for Western investment in the republic's oil, received prior approval for the project from the all-union petroleum ministries to alleviate concerns of western oil companies); see also Clearing Brush on the Soviet Oil Frontier, supra note 18, at H5 (quoting the international vice president of the Chamber of Commerce as stating that negotiating multiple agreements with the Republics and the central government is the best insurance policy).


105. Western Business Opportunities, supra note 38, at 179-80. Requirements under the original joint venture decree required approval by the U.S.S.R. Council of Ministers; however, the Central Committee and the Council of Ministers eliminated this requirement in order to ease the approval process for smaller joint ventures. Id.

106. Legal Framework for Oil and Gas Development, supra note 68, at 8. The partners must establish this agreement with the advisor participation of either the Ministry of Oil and Gas or the Ministry of Geology. Id.

107. Id.

108. Id.

109. Id. at 9.

110. Registration of Joint Ventures, supra note 103, § 5.
Beyond political instability, there are several other matters of immediate concern to entities pursuing investment opportunities in the Soviet oil industry. For example, the Western investor must secure the necessary transport system to enable oil exports.\(^\text{111}\) Reliance on the Soviet pipeline system could prove problematic because, in order to acquire access to it, the investor must make agreements with several agencies.\(^\text{112}\) Furthermore, due to years of neglect, the pipeline network has deteriorated to such a degree that the Soviets have sought the aid of foreign contractors for its repair.\(^\text{113}\) Construction of a pipeline system by the foreign investor would require a prohibitive amount of capital.\(^\text{114}\) Ethnic unrest likewise threatens to disrupt the flow of petroleum transported via pipelines across secessionist republics.\(^\text{115}\) Because many Soviet ports are located on the Baltic and Black Seas, exporters may find themselves dependent on cooperation from republics which are not directly benefitting from the oil venture.\(^\text{116}\) Soviet legislation addresses this issue in a generalized manner. For instance, a 1987 decree declares that the ministries and departments of the central government, as well as the governing bodies of the union republics, will cooperate to increase the export of goods competitive on foreign markets.\(^\text{117}\) Despite

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\(^{111}\) See Soviet Efforts to Attract Foreign E & P Investment, supra note 33, at 179 (questioning the use of the indigenous Soviet infrastructure to transport oil out of the Soviet Union).

\(^{112}\) See id. (stating that, because the Soviet transport system is controlled by several agencies, understanding the institutional workings of these agencies, as well as obtaining the necessary permits from them, could require lengthy investigative work for the Western company); see also Why Soviet Oil Wells Won't Be Gushing Soon, supra note 45, at 36 (citing the uncertainty regarding who controls the Soviet pipeline system as an impediment to investment by Western oil companies).

\(^{113}\) See Can Soviet Oil Save Gorbachev?, supra note 11, at 46 (stating that some pipelines burst due to initial poor construction and lack of periodic inspection). Close routing of gas pipelines in western Siberia, while less expensive, has left these lines vulnerable to catastrophic accidents. Soviet Oil Industry Woes, supra note 25, at 70. Furthermore, payment delays to Japanese metallurgical firms have temporarily stopped deliveries of pipe to the Soviet Union. Soviet Union Oil Sector Outlook Grows Bleaker Still, Oil & Gas J., Aug. 12, 1991, at 33.

\(^{114}\) Soviet Efforts to Attract Foreign E & P Investment, supra note 33, at 179.

\(^{115}\) See U.S. Joint Ventures, supra note 24, at 8 (stating that republics, oblasts, and krais all claim transit rights to oil and gas pipelines).

\(^{116}\) See Declining Soviet Oil Exports Holding Up Better Than Some Experts Expected, Oil Market Listener, Apr. 25, 1991 at 1, 5 (reporting that a new oil export terminal and port is being planned near Leningrad in the Russian republic in an effort to ensure uninterrupted flow of oil to the West). Export of production from the Baltic region is presently shipped primarily from Ventspils in the Latvian republic and Klaipeda in Lithuania. Id.

\(^{117}\) Decree No. 1074 of September 17, 1987, on Additional Measures to Improve the Country's External Economic Activity in the New Conditions of Economic Man-
this decree, foreign companies may find it necessary to negotiate with officials from other republics in order to guarantee a means of export.

C. PROCURING SUPPLIES FROM THE SOVIET MARKET

Another operational concern of the foreign investor relates to insuring the procurement of needed supplies and equipment from the Soviet market.118 An investor who imports all materials required for an oil drilling operation may have to expend large amounts of foreign currency, and face work stoppages due to delays in the arrival of imports.119 Therefore, the joint venture will probably rely on procuring at least a portion of its operational materials from the Soviet market.120

Additionally, integration of the joint venture into the Soviet economy presents challenges. From a legal standpoint, Decree 49 declares that the joint enterprise is independent of Soviet central planning.121 This legal provision may result in disadvantages for the joint venture.122 For example, because the Soviet Central Plan determines the allocation of all domestic supplies, the joint venture may find itself without needed materials if the total supply of a particular product has been already accounted for in the Plan.123 Thus, the oil venture should submit projected numbers of needed supplies and delivery timetables to the central planners for coordination with the Central Plan.124 Finally, joint
ventures should attempt to obtain an agreement from the Soviet Central Plan limiting the number of government inspections and permitting the enterprise to order supplies from outside the Soviet Union if the Soviet products do not meet suitable quality standards. 126

D. TECHNOLOGY TRANSFER

A top priority for the Soviet oil industry is obtaining Western technology in the area of oil production. 127 The United States, however, has traditionally blocked the exportation of advanced technology to the Soviets. 128 For example, the 1979 Export Administration Act gives the President of the United States broad discretion to restrict the export of

126. Id. at 187.
127. See Sansbury, U.S. Expertise Tops Soviet Union's Energy Shopping List, J. of Commerce & Commercial, Aug. 8, 1991, at 7B (reporting that Rantik Margulov, the first deputy chairman of the state fuels and energy commission, ranked "know-how" and expertise above equipment and hardware as the top priorities of the Soviet energy sector); see also Gabrielyants, U.S.S.R. Offers Variety of Exploration Targets, Oil & Gas J., June 3, 1991, at 71, 76 (stating that further growth of the Soviet petroleum industry is linked, in part, to manufacture of technical facilities for drilling, and the development of technology to enhance oil recovery); U.S. Oil Service/Supply Firms Urged to Venture into Joint Deals in U.S.S.R., Platt's Oilgram News, Apr. 1, 1991 at 6 (reporting that the Soviet Deputy Minister of Heavy Engineering told United States executives that the "Soviet oil industry needs technology for horizontal drilling, corrosion prevention, high pressure drilling, casings, compressors, lifts, maintenance equipment, and for production of heavy oil" and, therefore, the timing is appropriate for a joint venture); The Future of Soviet Oil, supra note 1, at 152 (citing a report by the chief architect of the revised Soviet energy program asserting that, if the world's most energy efficient technology could be utilized everywhere in the Soviet economy, energy consumption could be reduced by one-third); Clearing Brush on the Soviet Oil Frontiers, supra note 18, at H5 (quoting a United States oil consultant who asserts that the Soviet oil industry is using 1950's technology); Maggs, Direct Contacts by Soviet Organizations in International Economic Relations in F.J.M. Feldbrugge (ed.), The Distinctiveness of Soviet Law 194 (1987) (explaining that Soviet technical backwardness results primarily from a poor flow of information which is indicative of centralized decision making). But see Gustafson, supra note 16, at 334 (asserting that the energy sector generally does not require high technology and that only modest improvements are necessary to advance the Soviet energy sector up to world standards).
128. See Note, The New Soviet Joint Venture Law, supra note 15, at 880 (citing the United States Export Administration Act of 1979 and the United States' membership in the Coordinating Committee on Multilateral Export Controls (COCOM) as creating a formidable barrier to United States-Soviet joint ventures because they impose licensing requirements on the transfer of technical data); see also U.S. Delegation to Visit Soviet Union, supra note 23, at 977 (citing the 1974 Byrd and Stevenson amendments as limiting the ability of United States companies to sell their energy related goods and services to the Soviet Union). But see Controls on Oil and Gas Equipment to Soviets Ended, Other Foreign Policy Steps Extended, Int'l Trade Rep. (BNA) No. 3, at 64 (Jan. 21, 1987) (reporting a January 15, 1987 announcement by the Department of Commerce that it would lift restrictions on non-strategic oil and gas equipment and technology exports to the Soviet Union).
items deemed detrimental to United States security interests.\textsuperscript{129} In addition, the United States is a member of COCOM\textsuperscript{130}—a committee of industrialized nations striving to prevent the export of goods which could contribute to the military capability of communist nations.\textsuperscript{131}

Although the United States Department of Commerce lifted export restrictions to the Soviet Union on non-strategic oil and gas equipment in 1987,\textsuperscript{132} a number of other advanced technology items continue to require review by COCOM before they can be exported to the Soviet Union.\textsuperscript{133} The Bush administration, however, appears to be reevaluating its position on technology transfer to the Soviets. At the Moscow summit in August 1991, President Bush reportedly agreed to review COCOM rules restricting the sale of high technology goods to the Soviet Union.\textsuperscript{134} Following the failed coup attempt of August 1991, a special meeting of officials from the Group of Seven countries emphasized their support for technical aid\textsuperscript{135} which would focus on food distribution, defense conversion, and energy.\textsuperscript{136} Finally, a pending United States-Soviet agreement on energy was announced at an August 1991 meeting of Soviet and American energy officials. That agreement, if passed, will formally allow government exchanges of technology information.\textsuperscript{137}

\textsuperscript{129} Note, The New Soviet Joint Venture Law, supra note 15, at 888.

\textsuperscript{130} Bush Supports Rule Review for COCOM, J. OF COMMERCE, Aug. 6, 1991, at 3A [hereinafter Bush Supports Rule Review] (explaining that COCOM was established in 1949 to prevent the export of high technology goods to communist nations).

\textsuperscript{131} Note, The New Soviet Joint Venture Law, supra note 15, at 888-89.

\textsuperscript{132} See id. at 890 (stating that the United States Secretary of Commerce declared that controls on oil and gas equipment were no longer in the national interest of the United States because such equipment is widely available on the open market).

\textsuperscript{133} See Auerbach, High-Tech Export Curbs to Be Reexamined; Administration Rethinking COCOM After Coup Attempt, Wash. Post, Oct. 11, 1991 at F1 (explaining that the Bush administration has begun to rethink export curbs on the sale of advanced telecommunications equipment, computers and space satellites to the Soviet Union); Devroy & Dobbs, Bush, Gorbachev Probe Terms of Partnership, Wash. Post, July 31, 1991, at A1 (reporting that at the July 1991 United States-Soviet summit in Moscow, former Soviet President Gorbachev criticized the United States' policies on the export of technology as "a relic of the Cold War" and also asserted that Western barriers to technological exchange had brought about the cancellation of major projects for economic, technological and scientific cooperation).

\textsuperscript{134} Bush Supports Rule Review, supra note 130, at 3A.


\textsuperscript{137} Ryan, Soviets Visit Area for Technological Aid, Dominion Post, Aug. 1, 1991, at 1A [hereinafter Soviets Visit Area].
E. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Apart from the barriers to technology transfer created by United States policy, Soviet legislation provides little assurance that, once inside the Soviet Union, a foreign investor’s intellectual property will be protected. Inventions and “know-how” are listed in Decree 49 on joint ventures as property rights which may be considered a contribution to the charter fund of a joint enterprise. In addition, the joint venture legislation states that intellectual property of the joint enterprise shall be protected according to Soviet legislation and that transfer of property to a joint venture by its participants shall be governed by the joint venture’s charter. The 1990 Agreement on Trade Relations Between the United States and the Soviet Union includes provisions for the protection of intellectual property. This is the same agreement that grants Most Favored Nation trading status to the Soviet Union. As of September 1991, however, Senate approval of this agreement was pending. Because legislation on the protection of intellectual property rights offers no security for the foreign investor, Western and Soviet partners must negotiate and document explicit provisions to govern intellectual property investment.

F. LABOR ISSUES

Soviet labor issues represent a crucial area for negotiations. Amended Decree 49 strengthened the position of foreign investors by

138. See Soviet Ventures, supra note 43, at 81 (explaining that joint venture participants should not rely on the ambiguous language of current legislation to safeguard their real and intellectual property rights).
139. DECREE 49, supra note 36, at art. III, § 11.
140. Id. § 17.
141. Agreement On Trade Relations Between the United States and the Soviet Union, of June 1, 1990 (adoption pending), reprinted in, 1 PARKER SCH. FOREIGN & COMP. L., USSR Legal Materials, at art. VIII (V. Pechota & P. Pettibone 1991). This Agreement establishes that the two countries will: 1) ensure the protection and implementation of intellectual property rights in accordance with the provisions of internal legislation; 2) ensure that each country’s international commitment in the field of intellectual property rights is honored; and 3) encourage arrangements between American and Soviet institutions to provide protection for intellectual property rights. Id.
142. Id.
143. Id.; see also A Month of Summits, EYE ON THE EAST, Aug. 2, 1991, at 2 (reporting that at the Moscow Stadium in July 1991, President Bush pledged to request Congress to approve MFN trading status) [hereinafter A Month of Summits].
144. Soviet Ventures, supra note 43, at 81.
145. See Note, The New Soviet Joint Venture Law, supra note 15, at 875 (stating that, because labor is highly regulated by Soviet law, a Western investor may be pressured to adapt to Soviet labor standards); see also supra notes 134-141 and accompanying text (explaining some of the problems that Decree 49 presents for prospective investors).
declaring that a joint venture may determine matters affecting Soviet employees such as compensation and dismissal provided these acts conform with U.S.S.R. legislation. Still in effect, however, is the requirement that the administration of the joint enterprise conclude collective contracts with relevant Soviet trade union organizations.

The Decree also requires a joint venture to pay for state social insurance for Soviet and foreign workers. Finally, although Decree 49 asserts that Soviet citizens shall make up the bulk of the joint enterprise's personnel, it does not explicitly limit the permissible number of foreign employees. Thus, it is important for the Western partner to negotiate for an agreement whereby the number of Westerners employed will be determined by the foreign partner.

146. See Note, The New Soviet Joint Venture Law, supra note 15, at 877 (stating that Gorbachev has advanced a new incentive wage system as part of his domestic economic reform policy, the purpose of which is to stimulate worker production and professional improvement by introducing wage differentials for various levels of work quality).

147. See Comment, Joint Venture Law in the Soviet Union: 1920s and 1980s, 9 N.W. J. Int'l L. & Bus. 633, 642 (1989) (stating that amendments to the joint ventures decree which give ventures more independence illustrate the growing acceptance of the need for foreign investment) [hereinafter Comment, Joint Venture Law].

148. DECREES 49, supra note 36, at art. VI, § 48; see Changing Legal Environment in the U.S.S.R., supra note 28, at 17 (stating that clarification is needed regarding the applicability of Soviet labor legislation to joint enterprises).

149. DECREES 49, supra note 36, at art. VI, § 47; see Note, The New Soviet Joint Venture Law, supra note 15, at 878 (advising United States partners to investigate the influence and functioning of the relevant trade union and to include the union in labor negotiations in order to build a good rapport between management and labor and, thus, to prevent potential disputes); see also Penn, Trade Union's Rights Widened in U.S.S.R. Law, 2 SOVIET & E. EUR. L. 6, 11 (Mar. 1991) (warning that large-scale work stoppages in the past few years, and the benefits that workers have gained as a result thereof, illustrate the power of strikes as a negotiating instrument to which foreign investors are also exposed); see also The Future of Soviet Oil, supra note 1, at 158 (reporting in a letter to the U.S.S.R. Council of Ministers that 700,000 oil and gas workers threatened to close down oil and gas wells on April 1, 1990 unless they were assured of improved social conditions).

150. DECREES 49, supra note 36, at art. VI, § 48; see Comment, Joint Venture Law, supra note 147, at 652 (stating that foreign citizens will probably not benefit from state social insurance and no provision is made for repayment of the unused funds set aside for foreign workers).

151. DECREES 49, supra note 36, at art. VI, § 47.

152. Western Business Opportunities, supra note 38, at 186; see Note, The New Soviet Joint Venture Law, supra note 15, at 878-79 (citing Reform of Soviet Foreign Economic Relations, Ecotass, No. 4, Jan. 19, 1987, at 25) (stating that one interpretation of this provision asserts that, among foreigners, the joint venture may employ only a limited number of highly-skilled specialists); see also Comment, Joint Venture Law, supra note 147, at 652 (asserting that Soviet trade unions could be difficult to deal with because they will apply Soviet legislation to all employees, regardless of citizenship).

IV. FINANCIAL CONCERNS

A. Taxation

Legislation on the taxation of foreign entities illustrates the constant flux in Soviet law. As of June 1991, four different taxes were levied against the foreign investor: corporate income tax, repatriation of profits tax, excess profits tax, and export tax. The Soviet corporate income tax rate for joint ventures with more than thirty percent foreign ownership is thirty percent; however, the Russian republic recently announced a twenty-five percent corporate income tax rate for joint ventures on its territory which are at least thirty percent foreign owned.

In addition, a foreign company that transfers its profits abroad and fails to reinvest them in the Soviet economy remains subject to a fifteen percent repatriation of profits tax. The applicability of this tax to oil ventures, however, is questionable because profits for most foreign firms

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155. See *Soviet Ventures*, supra note 43, at 80 (explaining that current tax treatment of foreign investment is more complicated than previous provisions); see also *Changing Legal Environment in the USSR*, supra note 28, at 13 n.69 (explaining that enterprises' transfer of five percent of their convertible currency assets to local and regional executive committees, which Decree 1405 mandates, functions as an additional tax on the enterprises' income).

156. See *Soviet Ventures*, supra note 43, at 80 (stating that, in 1987, the corporate income tax and the repatriation of profits tax were the only two taxes levied against a foreign entity). In 1990, two additional taxes were added, including an excess profits tax and an export tax. Id.

157. Id. Corporate income tax on solely Soviet-owned entities is 45%. Id. In addition, joint enterprises are exempt from this tax for two years following the moment they receive declared profits. DECREE 49, supra note 36, at art. IV, § 36; see Comment, *Joint Venture Law*, supra note 147, at 651 (stating that joint ventures located in the Soviet Far East receive a tax waiver for the first three years after the moment of declared profits, but when this grace period expires, the corporate income tax rate is 10%).

158. *Russian Republic Cuts Entity Tax Rate, Foreign Firm Tax Rate*, Int'l Trade Rep. (BNA) No. 24, at 909 (June 12, 1991); see id. at 910 (discussing a possible accommodation between the U.S.S.R. and the Russian republic whereby entities which formed under the all-union law file their taxes with the U.S.S.R., even if located in Russia). Likewise, entities formed under Russian law that file their taxes with Russian tax authorities are subject to Russian tax law. Id.

159. Id. The same decrees issued by the Russian Republic's Supreme Soviet also set a 32% corporate income tax on joint stock companies, regardless of the amount of foreign ownership, and a 25% corporate income tax rate for wholly foreign owned joint stock companies. Id.

160. *Soviet Ventures*, supra note 43, at 80. The previous rate for the repatriation of profits tax was 20%. DECREE 49, supra note 36, at art. IV, § 41; see *Soviet Efforts to Attract Foreign E & P Investment*, supra note 33, at 179 (declaring that British oil
are derived solely from the export and subsequent sale of oil on Western markets.\(^6\) Thus, it appears that a foreign company's profits will not be subject to the repatriation tax provided all profits for foreign partners in oil ventures are derived outside of the Soviet Union.\(^6\)

Foreign investors are also subjected to an excess profits tax.\(^6\) An enterprise must pay this tax once it surpasses certain profit norms\(^6\) specific to the respective industry.\(^6\) Under Soviet law, profits which exceed this norm by ten percent or less are subject to an eighty percent tax, while an enterprise which exceeds the norm by more than ten percent is subject to a ninety percent excess profits tax.\(^6\) In contrast, the more lenient Russian law permits a fifty percent profit margin. Accordingly, firms exceeding the profit norm by fifty percent or less are exempt from excess profits tax, while those which surpass the norm by more than fifty percent are subject to a seventy-five percent tax on excess profits.\(^6\)

Perhaps most indicative of the persistent legislative changes in the Soviet oil industry, are changes in Soviet export tax rates.\(^6\) In the first half of 1991 alone, the Soviets amended the tax rate for oil exports three times.\(^6\) Each successive amendment bestowing greater advantages to the foreign investor.\(^7\) Although the lower rates serve as incen-

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161. Id. at 179. The method for levying this tax against firms that choose to avoid reinvestment in the Soviet Union remains questionable. Id.

162. Id. (explaining that it is not clear how the repatriation of profits tax will be applied to enterprises opting not to reinvest their profits back into the U.S.S.R.).

163. See Soviet Ventures, supra note 43, at 80 (reporting that Soviet enterprises with no foreign investment are subject to a 100% excess profits tax).

164. Id.; see RSFSR Asserts Autonomy in Tax Law, 2 SOVIET & E. EUR. L. 6 (Feb. 1991) (stating that the U.S.S.R. government has not yet set profitability norms) [hereinafter RSFSR Asserts Autonomy].


166. RSFSR Asserts Autonomy, supra note 164, at 6.

167. Id.; see Soviet Ventures, supra note 43, at 80 (mentioning that the RSFSR excess profits tax is based on cost of production).

168. See Comment, Joint Venture Law, supra note 147, at 651 (asserting that, by amending tax incentives, the Soviets indicate their willingness to change legislation according to pragmatic concerns).

169. See Soviet Tax Maze, supra note 23, at 8 (reporting that, on January 20, 1991, Moscow announced that they would tax exports at a rate of 40%). In March 1991, a decree by the Council of Ministers reduced the rate to 10%. Id.; see also Group of Seven Supports EC Plan For European Energy Market, J. OF COMMERCE & COMMERCIAL, July 18, 1991, at 1A [hereinafter Group of Seven] (stating that Moscow had announced in mid-July that oil and gas export taxes would be lowered to three percent). Moscow did this, apparently, in response to a 50% reduction in hard currency energy exports. Id.

170. See Soviet Ventures, supra note 43, at 80 (explaining that oil ventures that depend on the export of oil for a return on investments were especially hard hit by the
tives to Western investment, their longevity is questionable since export tax rates are subject to yearly adjustments.

B. CURRENCY

All joint enterprises operating in the Soviet Union must secure the necessary foreign currency to conduct business operations. Because the Soviet ruble is non-convertible, a foreign partner's profits depend on hard currency derived from the sale of Soviet products to the West. In fact, Decree 49 asserts that all of a joint venture's currency expenditures must derive from the receipts of the enterprise's sale of products on the foreign market. While this legislative requirement poses difficulties for ventures producing goods solely for sale on the Soviet market, it does not impede oil ventures to the extent their profits are realized by the sale of oil on world markets.

Finally, a presidential decree of October 26, 1990 entitled On Introducing a Commercial Exchange Rate Between the Ruble and Foreign Currencies and Taking Measures to Create a Unionwide Foreign-Currency Market, gave foreign enterprises the right to buy and sell foreign currency for rubles at currency auctions and exchanges. The Decree further provided for the establishment of a commercial exchange rate between the ruble and foreign currencies, adjusted by the U.S.S.R. State Bank. These provisions are important for oil ventures because they enable foreign investors, whose profits are in hard currency, to pay for Soviet labor in rubles.

171. See id. (observing that foreign investors may grow weary of even favorable changes since they indicate an unstable framework upon which to negotiate).
173. See Western Business Opportunities, supra note 38, at 187-88 n.136 (stating that enterprises need foreign currency to pay non-Soviet employees and to import products and technology).
175. DECREE 49, supra note 36, at art. III, § 25.
176. See Soviet Decree on Forced Sale of Foreign Currency Does Not Affect Foreign Capital, 1 SOVIET & E. EUR. L. 6 (Nov. 1990) (citing a presidential decree, entered into force on November 2, 1990, that forces Soviet enterprises with no foreign capital to sell to Vneshekonombank 40% of the hard currency they earn from exports).
178. Id. At the time of this Decree, the commercial exchange rate was set at 1.8 rubles to one United States dollar. Id.
179. Id. (declaring that the October 1990 decrees illustrate a lifting of restrictions on an internal foreign currency market, a necessary prerequisite for switching to a convertible ruble); see A New Era for Foreign Investment, supra note 30, at 2 (stating
V. RECENT DEVELOPMENTS

The August 1991 coup attempt by conservative forces immediately altered the Soviet Union's political structures. The nation's economic bureaucracy, however, has been slower to change. In response to the desperate state of the Soviet economy, the United States and other Western nations made firm commitments to provide technical aid, but declined to provide large amounts of monetary aid.

Reports that the Soviets may suffer from fuel shortages during the winter of 1991-92 reflect, in part, the inadequate condition of the Soviet oil industry. Although forecasters predict that overall investment by private companies and Western governments will continue to be meager in the months following the coup, specialists assert that Western companies may be willing to invest in the Soviet oil industry. Western nations expressed their intent to offer economic assistance to the Soviets prior to the August 1991 coup attempt. President Gorbachev's unofficial meeting with leaders of the Group of Seven in-

that these recent decrees are indicative of the commitment of the Gorbachev government to stimulate foreign investment; see also Foreign Firms Allowed to Open Ruble Accounts in Soviet Banks, 2 SOVIET & E. EUR. L. 7 (Mar. 1991) (stating that a subsequent law, adopted in March 1991, permits foreign investors to open and maintain ruble accounts in authorized banks).


181. See Dobbs, Soviet Congress Balks at Plan to Revamp Union; Two Sides of the Same Cup: So Many Changes-Or So Few, Wash. Post, Sept. 15, 1991, at A1 (remarking that, while the August 1991 coup attempt removed many of the political barriers to economic reform, economic reform has scarcely begun); see also Baker Finds Soviets Eager, supra note 135, at A1 (referring to the statements on the part of Soviet government officials that the political situation in the country remains volatile and if government officials fail to provide more goods for Soviet citizens, the reform process may be discredited).

182. See Baker Finds Soviets Eager, supra note 135, at A1 (citing reports regarding statements by Secretary of State Baker and that he remains convinced, even after post-coup meetings with government leaders, that the most effective way to help the Soviets is not by pouring large amounts of aid into the Soviet Union, but rather by expanding technical assistance to the Soviets).


184. Investment Dollars Unlikely to Flow to the U.S.S.R., Republics, Economists Say, Int'l Trade Daily (BNA), at 1 (Sept. 3, 1991) [hereinafter Investment Dollars Unlikely to Flow to the U.S.S.R.]; see Kissinger, Russian Minefield, Wash. Post, Sept. 17, 1991 at A19 (contending that assertions that the best way to aid the Soviet economy is by creating favorable conditions for foreign investment is a circular argument because "the biggest obstacle to private investment is political chaos, which in turn is fed by economic distress that seems unavoidable whatever the level of aid").

185. Id.; see Why Soviet Oil Wells Won't Be Gushing Soon, supra note 45, at 36 (stating that the failed coup bodes well for Western oil companies because it has removed Soviet hard-liners from the scene and shifted power to the republics).
Industrial nations at the London Economic Summit in July of 1991 resulted in a commitment to offer technical aid in the area of energy resource development. The Group of Seven also endorsed the European Energy Charter, a plan initiated by the European Community whereby Western capital and technology would be swapped for secure supplies of Soviet oil and gas. This Charter will assist Western oil companies by providing them with legal guarantees for their investments and by allowing repatriation of profits.

A few weeks later at the Moscow summit, President Bush reaffirmed his commitment to assist the Soviet energy sector by signing a protocol that would transfer up to twenty million dollars in technical aid targeted at, among other things, the oil industry. In addition, Senate approval of the 1990 United States-Soviet trade agreement, which would give the Soviets most favored trading status in exchange for provisions that protect American commercial interests in the Soviet Union, is scheduled for Fall of 1991.

186. Dobbs & Frankel, Summit Leaders Agree to Provide Soviets With Technical Assistance but No Money, Wash. Post, July 18, 1991, at A1; see Mufson & Hoffman, West, Japan Cautious on Soviet Aid; Summit Leaders Cool to Gorbachev Letter, Wash. Post, July 15, 1991, at A1 (reporting that President Bush will present ideas on how to improve exploitation of Soviet oil reserves rather than offer a broad program of economic assistance); see also Soviets Visit Area, supra note 137, at 1 (reporting that a meeting of United States and Soviet energy specialists in Morgantown, West Virginia became the first sharing of technology under the London and Moscow summit agreements).

187. Group of Seven, supra note 169, at 1A. The Group of Seven’s political commitment to the European Energy Charter may expedite the signing of the Charter by year end. Id.

188. Id.

189. A Month of Summits, supra note 143, at 2; see Barber & Lloyd, Bush Calls for Baltic States’ Independence and Deep Defence Cuts; Soviet Aid Linked to reforms, Fin. Times, July 31, 1991, at 1 (reporting that President Bush promised to grant the Soviets Most Favored Nation Trading Status); Soviet Energy Shopping List, supra note 14, at 7B (citing a Soviet energy official as stating that Soviet exporters would benefit from Most Favored Nation status). But see Barber & Lloyd, Bush Stresses Need to Unleash Business Spirit, Fin. Times, July 31, 1991, at 3 (questioning the value of Most Favored Nation status for the Soviet Union because about half of all United States imports from the Soviet Union already enter duty free and, also, because there is little that Americans want to buy from the Soviets).


VI. RECOMMENDATIONS

Western governments, Western oil companies, and the Union and republican governments of the Soviet Union should take steps to encourage additional and more expedient foreign investment in the Soviet oil industry. First, because Western governments are faced with troubled domestic economies and are, thus, unable or unwilling to offer the Soviets full-scale economic assistance, these governments should focus their efforts on developing ways to encourage investment by private oil companies. They should play an active role in organizing and participating in seminars and discussions between private oil companies and Soviet officials at both the republic and the union levels. In July of 1991, for example, the United States Department of State sponsored discussions between U.S. oil companies and research firms and Soviet officials in Moscow that focused on overcoming the political, legal, and economic obstacles to joint development of Soviet oil. Additional seminars are needed to expand communications between Western businesspeople and Soviet and republican officials, to address issues of concern for potential investors. The various agencies of Western governments can play an instrumental role in bringing parties together and instilling more confidence in the Western investor through official support of Soviet oil projects.

Apart from organizing discussions between the parties, Western governments should provide consulting services for oil companies through relevant agencies such as the United States Department of Commerce and the United States Department of Energy. Such services should compile lists of important Soviet contacts as well as provide information on relevant treaties and legislative changes.

Western oil companies could also do more to advance their investment plans and insure profits from Soviet oil ventures. Because the Soviet and Russian laws governing foreign investment are vague and un-

193. *See Why Soviet Oil Wells Won’t Be Gushing Soon*, supra note 45, at 38 (listing ways in which the Bush Administration could encourage private investment in the Soviet oil industry, such as signing tax agreements with Union and republican governments in order to eliminate the possibility of double taxation, emphasizing oil-related issues during bilateral meetings, and projecting a more positive attitude toward private investment in Soviet oil so that banks will be more willing to finance oil deals).
clear, great care must be exercised to clearly detail all relevant legal and business issues in the investment agreement. Doing so, will remove much of the uncertainty from investment and reduce future problems. In addition, Western oil companies should not allow the political instability of the Soviet Union to hinder the progress of their investment plans. While the shifting political situation might alter the necessary agencies and officials with whom the foreign investor must deal, the realities of the nation’s economic situation make it unlikely that political changes will adversely effect foreign investment. This is particularly true for the Soviet oil industry because the nation’s primary source of hard currency derives from oil exports.

The Soviet and republican governments should also do more to facilitate foreign investment in the oil industry. First, these governments should increase their awareness of the Western investor’s needs. They should meet with international business lawyers and consult analogous Western investment contracts to ensure that all of the foreign company’s concerns are addressed in the contract. Likewise, these governments should take similar measures to eliminate many of the ambiguities from relevant legislation.

Perhaps most importantly, the Union and republican governments must cooperate with each other to guarantee the rights of currently-operating oil ventures. Cooperation would also serve to reassure those foreign oil companies still negotiating that their investments will not fall victim to lack of cooperation between Moscow and the republics, and among the republics themselves. For example, because Soviet oil equipment is produced exclusively in the republic of Azerbaijan, the Union government and the governments of various republics should contract with the Azeris to exchange equipment for percentages of either the oil produced or the revenue obtained. Similar agreements should be forged between oil producing republics and those entities which control the pipelines through which oil must be transported.

196. See A New Era for Foreign Investment, supra note 30, at 11 (declaring that companies who forge ahead with their investment plans will define the process of foreign investment for companies which follow).
197. See U.S., Soviets Talking, supra note 194, at 6B (reporting the comments of first deputy minister of the Soviet Union’s Ministry of Oil and Gas, who said that large United States oil companies are too concerned with assessing the political risk of investment and that smaller companies have been more successful in consummating investment agreements).
198. See After the Soviet Union: Can the Dreams Overcome the Odds of Disaster?, Bus. Wk., Sept. 9, 1991 at 30 (reporting that a factory in Baku produces the nation’s entire supply of sucker-rod pumps used in the production of oil).
CONCLUSION

Regardless of the prevailing political and economic structure, the Soviet Union will continue to rely on the export of oil. The growing ills of the domestic economy necessitate participation in the world economy and, in turn, dependence on oil exports. Therefore, the Union and republican governments will continue to adapt their legal and economic conditions in order to provide a more hospitable environment for the Western oil investor.