

# Equity Joint Ventures in PRC

*Negotiating joint venture agreements requires enthusiasm, imagination; author offers tips*

BY CHRISTIAN M. VERBEECK\*

When going through the 1979 investment guides of a reputable consulting firm, it occurred to this writer that the booklet dealing with the People's Republic of China contained 24 pages. The booklet with respect to Trinidad and Tobago, on the other hand, was 82 pages thick.

Since 1979, the year in which China published its Law on Joint Ventures using Chinese and Foreign Investment (the "Joint Venture Law"), there have been significant and rapid legislative developments. The purpose of this article is to survey certain issues related to the negotiation and operation of equity joint ventures ("JV(S)") in the continuously evolving Chinese legal framework.

## INVESTMENTS IN PR CHINA

Potential investors into China can direct their investments through several channels. The major type is the "contractual joint venture." It encompasses different forms of cooperative investments, ranging from transfer of technology (license) agreements, turnkey projects and manufacturing agreements to compensation trade arrangements. Contractual joint ventures are the most popular and flexible forms of foreign investment in China. The equity joint venture ("JV") is the type of investment requiring the establishment of a limited liability corporation in accordance with the Chinese laws. There is a third fairly recent form, involving corporations with sole foreign capital (100% foreign owned). These foreign-owned enterprises are operated solely with funds provided by a foreign investor who manages them independently. The majority of these are established in special economic zones, where they benefit from specific tax incentives. A Law on Wholly-Owned Foreign Enterprises was adopted on April 12, 1986. The basic requirements enacted therein are that such foreign-owned enterprises apply advanced technology or produce mostly for exports.

This article will deal primarily with the equity joint-venture type of investment.

## LEGAL SOURCES

China's establishment of a legal framework has, if mea-

\*General Attorney, Johnson & Johnson, New Brunswick, N.J.

ured solely by quantitative criteria, been quite successful. Since its open-door policy started in 1978, more than 300 different laws and decrees have been enacted. China's foreign economic legislation governing, in particular, equity joint ventures is principally incorporated in the following: the July 8, 1979 Joint Venture Law (15 articles); the September 20, 1983 Regulations for the Implementation of the Law of the P.R. of China on Joint Ventures Using Chinese and Foreign Investment (118 articles) (the "Implementation Regulations"); the September 10, 1980 Income Tax Law concerning Joint Ventures (18 articles) (the "Income Tax Law") and its various implementation regulations and provisions; the July 26, 1980 Provisions on Labor Management in Chinese - Foreign Joint Ventures (16 articles); the December 18, 1980 Interim Regulations on Foreign Exchange Control of the P.R. of China (34 articles) and their subsequent implementation regulations.

Fairly recent legislation having substantial bearing on JV operations in China includes: the China Patent Law, effective as of April 1, 1985 (69 articles); the China Patent Law, effective as of April 1, 1985 (69 articles); the Regulations on Technology Import Contracts, effective as of May 24, 1985 (13 Articles); and the Economic Contract Law, effective as of July 1, 1985 (43 articles).

The quantitative efforts, however much they are valued, do not, however, always live up to the qualitative expectations of foreign investors.

In trying to keep pace with the rapidly evolving economic and political scene, Chinese laws sometimes codify seemingly irreconcilable legal concepts and leave uncertainties.

Among these uncertainties are how to reconcile the apparent contradiction between the general prohibition to assign a JV's right to the use of land with the freedom to transfer a JV's equity participation or assets? Are intangible assets valued when the JV is dissolved and liquidated upon the contract's termination?

## Legislative Uncertainty

China's continuous legislative process creates another uncertainty for foreign investors. Since January 15, 1986, China has issued the revised duration (50 years) of the JV term, the Regulations on the Balance of Foreign Exchange Revenue and Expenditure issued on the same date, and the Law on Wholly-Owned Foreign Enterprises adopted on April 12, 1986.

In many instances, the new laws' retroactive application compounds the resulting lack of legal security. As China is only gradually establishing a coordinated set of foreign economic laws, this situation will, for some time, have to be considered as a major cautioning factor in the

making of any investment decision.

Foreign investors who prefer the equity joint venture over the more flexible and expeditious contractual cooperation forms should be aware that the negotiation process with respect to the former is a rather time and energy consuming exercise. After all, if negotiations mature they will result in a commercial "marriage of convenience." This involves establishment of a separate legal entity: a limited liability company with joint equity ownership and management.

Since creation of this structural presence results in many commercial, financial, fiscal, social, and legal implications, negotiators are well advised to identify in advance as many as possible of the underlying assumptions and economics of the prospective cooperation. Although the legal framework of China is steadily improving, potential investors (both Chinese and foreign) should carefully address and negotiate in as much detail as possible such important issues as: the total capital contributions and investment, the treatment and destination of profits, the management of the company, the costs, ways and means of procuring raw materials and equipment and the arrangement for foreign currency needs.

The (legally required) feasibility study and the JV contract provide the appropriate documentary instruments to incorporate these crucial items. Since, however, any Chinese JV would still have to operate in a so-far largely unknown foreign forum, primary responsibility for the accuracy of the key local assumptions and projected merits specifically related to the Chinese environment should be allocated to the Chinese parties. The so-called "stabilization clause" in the contractual documents will further provide certain flexibility to make the necessary adaptations to the changing local environment.

#### *Equity and Ownership*

The JV partners can agree on the means of contributing to the registered capital. Equity can thus be in cash (foreign and local currencies) and in kind. The latter includes materials, equipment, buildings, land and technology. Evaluation of the capital contributions are made by agreement between the JV partners or by an agreed-upon third party. The capitalization of technology is, in general, restricted to a certain percentage of the foreign partner's equity interest.

The Implementation Regulations specify that the distribution of profits and the sharing of losses and risks are in proportion to the respective contributions to the registered capital. The JV partners are liable to the JV within the limits of the subscribed capital.

There is no legal maximum on the proportion of foreign ownership of the JV. Although foreign investors are sometimes eager to achieve maximum ownership, they should nevertheless be aware of the specific conditions linked to such majority ownership. One common Chinese request involves an export obligation of the foreign partner expressed as a percentage of the production output. Negotiators are, therefore, advised to assess carefully whether the merits of a majority ownership outweigh the particular conditions attached thereto.

#### *Foreign Currency Balance*

The subject of foreign currency balance is clearly the

most challenging issue that any JV in China needs to address. The Joint Venture Law, the Implementation Regulations and the relevant foreign exchange regulations clearly set the rules: a JV is expected to balance its foreign currency needs and income.

In general, domestic sales are paid in nonconvertible local currency, the Yuan Renminbi. To cover their short-term foreign currency needs, the partners to the JV will, therefore, be required to inject certain amounts of foreign exchange as capital. Once established, the JV itself might have to borrow foreign funds, available on the domestic or international financial markets. To finance both its operational needs (such as imported raw materials, equipment, service of international debt, certain expatriate costs) as well as its longer term needs (such as expatriable dividends and technology fees), the necessary foreign exchange will have to be generated.

During negotiations, the Chinese have a tendency to emphasize the foreign partners' primary responsibility to generate these funds. To such effect, a contractual commitment to export a fixed percentage of the JV's output is sometimes proposed. Although this type of provision appears in the Chinese Reference Format for Joint Venture Contracts, at this writing, there is no express statutory obligation to export a certain percentage of a JV's output.

In practice, however, a JV will not only be "encouraged" to export its products, it will actually also face a *de facto* need to export to generate sufficient foreign currency income. In principle, any Sino-foreign JV should thus be viewed as export oriented. This precept is in line with China's avowed policy to attract JV so as to acquire technology and improve the country's export performance. It also has constantly been reiterated as a red thread throughout legislation as well as in the past and latest (seventh) five-year plan for social and economic development.

To deal with this major issue, the 1983 Implementation Regulations already called for certain solutions. These have indeed allowed certain JV to sell their output mainly on the domestic market. Such ventures are then permitted to convert their domestic earnings into foreign exchange made available by the local or, if need be, by the central authorities. The now famous Article 75 of the Implementation Regulations, however, has only been applied to selected projects considered to be of strategic importance.

Facing increasing pressures from actual investors and hesitancy from potential investors, Beijing recently promulgated the January 15, 1986, Regulations on Joint Venture Balance between Foreign Exchange Revenue and Expenditure. These incorporate various techniques which had already been developed during the course of certain negotiations and JV operations to solve foreign exchange shortages.

Among the suggested courses of action are:

1. The sale of the JV's products in China against foreign currency if import substitution is achieved and approved by the relevant central or local authorities.
2. The outright sale of the JV's products in foreign currency to Chinese enterprises or organizations having foreign currency reverses, subject to the approval of the foreign exchange control departments.
3. The export of domestic (non-JV) products through arrangements whereby the JV, subject to the approval

of the Ministry of Foreign Economic Relations and Trade ("MOFERT"), purchases these domestic products in local currency.

4. The pooling of foreign currency earnings between two or more JVs in China in which a foreign investor would own an equity interest.

5. The reinvestment of the foreign partner's local earnings in another JV with foreign exchange earnings potential.

The implementation of the above suggestions will, however, be hampered by substantial practical problems such as the shortage of domestic products with significant export potential and the difficulty of identifying domestic purchasers and trading partners with sufficient foreign currency reserves.

In addition, the new regulations do not specify at which rate (the official or the "internal settlement rate") the currency conversions will be made. Although these measures are valid efforts to accommodate a JV's prime concern, they should also be viewed against the background of China's present depletion of foreign currency reserves, which dropped 29% in 1985 over the previous year.

Moreover, domestic enterprises, foreign trade organizations and agencies alike have been granted more autonomy to operate directly in the export business. This increased trading authority has created a fierce internal competition to achieve more exports. These, in turn, enable the exporting enterprises to retain bigger percentages of hard-won foreign currency in accordance with the Chinese export incentives system. The foreign exchange so earned can then be applied by the Chinese enterprises to finance itself certain imports.

JVs facing foreign exchange imbalances will, therefore, have the difficult task of finding suitable domestic partners who either sell internationally competitive products or are willing to spend their foreign exchange for goods purchased locally.

In the multi-investment alternative, foreign investors will also have to obtain the approval of local partners willing to use the foreign exchange surpluses of their venture to offset the deficits accumulated by another venture.

Finally, any endeavor to obtain all required central or local approvals will encounter cautious and perhaps reluctant sanctioning of the JV's foreign currency plans. Under the new rules, the approval authority is, indeed, equally responsible for solving any foreign exchange deficits of the approved venture, provided it has met its contractual obligation to export and generate foreign currency.

Given the latter proviso, it is advisable to include in the contract the necessary qualifications, emphasizing that best efforts (but no firm commitment) will be undertaken to meet the JV's export and/or foreign currency generation plans.

China has enacted a fairly comprehensive set of legal norms ruling the transfer of foreign technology. In many instances, the 1985 Patent Law and 1983 Trademark Law have been quoted as sound illustrations of China's determination to protect the rights and interests of foreign investors. Shortcomings in these laws, such as the lack of patent protection for pharmaceutical products and the cumbersome filing of trademarks, are equally to be acknowledged.

The transfer of technology contracts entered into by JVs are governed both by provisions of the 1983 Implementation Regulations and by the 1985 Regulations on Technology Import Contracts ("Technology Regulations"). These rules are not applicable to the transfer of technology performed through an equity investment to the JV's capital. The 1985 Technology Regulations confirm, but also sometimes differ from, certain principles set forth in the Implementation Regulations. For instance, they incorporate the common Chinese request for the licensor to provide strict performance guarantees regarding the technology's ability to achieve the targets specified in the contract.

Article 8 of the Technology Regulations, like the Implementation Regulations, stipulates that the usual term of the technology contract is ten years, but allows this term to be exceeded if approved by the appropriate authorities.

The Technology Regulations further provide that the licensor may not impose certain restrictive articles in a technology agreement. These include so-called tying clauses whereby the Chinese licensee (e.g. JV) would be required to purchase "unnecessary" techniques, raw materials, equipment, or products or services; restrictions on the technology's recipient to source or purchase raw materials; limitations on sales channels, including exports, quantity, variety and selling prices of the products manufactured with the licensed technology and prohibitions on the use of the imported technology after the contract's expiration.

### Tighten Rules

These stipulations, in some instances, tighten the rules previously set forth in the Implementation Regulations. A strict interpretation of them might therefore raise some legitimate concerns about the extent of the protection granted to the technology licensed in China.

Experience suggests, however, that all these rules governing the licensing of technology in China serve the primary purposes of establishing a handy legal framework within which the technology agreement must be negotiated. In being able to refer to these provisions Chinese negotiators, indeed, acquire a negotiating edge from the outset. Past application of the Implementation Regulations has, however, shown that the Chinese are rather pragmatic and hence adopt a flexible interpretation of certain legal precepts.

Chinese parties, for instance, always insist on inserting performance guarantees whereby the licensed technology is contractually warranted to perform according to the given specifications. It should be obvious, however, that such warranties can only be extended if contractually linked to certain practical conditions such as the adequate technology absorption capacities of the Chinese licensee and the availability of approved and suitable equipment, material and services. A convincing case should therefore be made that performance guarantees are intimately conditioned on the procurement of certain materials, equipment and services of the foreign licensor.

The statutory 10-year limitation of the technology agreement in association with the recipient's right to use the transferred technology after the contract's ex-

piration have sometimes erroneously been interpreted as a codified permission for the Chinese JV partners to acquire the free use of this technology. Such a perception runs contrary to the concept of the JV's shared ownership of the licensed technology. Moreover, the JV's right, as licensee, to use the imported technology upon the contract's termination does not necessarily sanction an unlimited license for a harmful post-termination exploitation of the transferred technology. Since the Chinese have a well-deserved reputation for trustfully abiding by the terms of an (often stubbornly negotiated) agreement, it is therefore recommended to carefully draft appropriate guarantees for continued use and protection of the licensed technology upon the contract's termination.

### Internal Transfer

Another area of concern resides in China's alleged "internal transfer of technology." This occurs when key personnel of the JV, after having absorbed the technology, are then relocated to other domestic organizations. Non-compete clauses, coupled with necessary secrecy obligations should, therefore, be strict prerequisites to any confidential disclosure. In addition, foreign licensors should involve and obtain the endorsement of the appropriate authorities to minimize the risks and substantial exposure resulting from this kind of internal technological diffusion.

In the final analysis, whether certain contractual concepts will be accepted will depend on whether MOFERT (the approval authority) will continue to apply the relevant rules in a realistic and reasonable manner. Given MOFERT's past track record in this respect, there is no immediate reason to question China's basic pragmatic attitude towards justified and legitimate requests of the foreign licensor.

### PROCUREMENT OF RAW MATERIALS

During negotiations, and later the JV's operations, considerable attention should be directed to the supply of raw materials, equipment and utilities.

Chinese laws require that, under equal conditions, a JV should give first priority to the purchase in China of needed machinery, raw materials and transportation means. This proposition, in theory, makes economic sense. By buying raw materials on the domestic market, a JV reduces the foreign currency outlays required to finance imports, thereby, also reducing the need to earn foreign exchange. It also achieves a savings on customs duties (varying from 50 to 70%) and taxes levied on imported materials and equipment used in the production of goods sold on the domestic market. It, moreover, creates a potential for export opportunities through the manufacture and export of internationally competitive products by the JV. And, under the present Chinese investment climate, it is generally perceived that a JV's key to success lies with its exports.

Finding acceptable domestic raw materials can however, be a difficult task in China. The availability and continuity of domestic procurement sources, the deficiency of infrastructures and the absence of quality standards and cost competitiveness of local materials. Decisions on local integration and selection of the prod-

ucts which a JV can locally manufacture and export will ultimately be based upon production economies. For this reason, it is generally advisable to obtain from the Chinese partners, guarantees on the continuing accessibility, the quantity and quality and cost competitiveness of raw materials sourced in China.

### Management

At this writing, China has not yet enacted a company law. The Implementation Regulations, which address certain corporate aspects, stipulate that the highest authority of the JV is its Board of Directors. Applicable Chinese JV laws do not recognize the existence of a shareholders meeting. In the absence of shares, contributors to the corporate capital receive investment certificates.

In reference to the proportion of investment contributed, the Implementation Regulations seem to recognize equity participation as the measure of the directors' distribution in the Board of Directors. Thus, Chinese laws appear to accept equity ownership as a possible measure of management control in the Board of Directors. In addition to the greater profit-participation, foreign investors often perceive managerial prevalence as one of the main benefits derived from a majority interest. Such equity ownership, however, need not be the sole lever by which operational control can be achieved. When deemed necessary, a foreign participant can also secure prime management influence through detailed voting arrangements with his Chinese counterparts.

The Implementation Regulations only require a unanimous decision of the directors present (or represented) at the Board meeting for matters such as revisions to the articles of association, dissolution, termination and merger of the JV and increases in, and assignment of the registered capital. All other items, including the protection of minority interests, although always requiring a quorum of more than two-thirds of the directors, can be decided on in accordance with any voting arrangements between the JV partners as stipulated in the articles of association.

To foster the development of the JV's management in accordance with certain agreed upon principles, some JVs have adopted basic statements of management principles in their contract. Such guidelines can, indeed, be helpful in solving certain management issues arising at Board meetings.

The daily management may be carried out by a general manager, who may be a foreigner. The Implementation Regulations further require that the general manager consult with the deputy general managers in handling "major issues." Since the Chinese laws do not explicitly identify which operational issues are considered "major," it is advisable to itemize these in the articles of association or the contract. In doing so, potential conflicts over local participation, co-determination and the resulting sharing of managerial responsibilities can be minimized.

Finally, it should be observed that the Chinese do not like the idea of "management control" because it conflicts with their wish and perception of running JV operations according to the principle of "equality and mutual benefit."

Foreign negotiators should be aware of this particular

sensitivity when addressing the issue of the JV's management. Chinese counterparts are pragmatic and realistic enough to recognize that in certain areas the foreigners' expertise and resources are both crucial and prevailing. Recognition of this fact, associated with due appreciation of certain cultural sensitivities, often paves the way for an understanding granting certain primary management responsibilities to the foreign managers or directors.

*Taxes*

China's taxation system applicable to JVs is embodied in the 1980 Income Tax Law and its various associated implementation regulations. The national tax rate is 30% on net profit. Local income tax of 10% on the actually paid national tax is added thereto. There is a preferential treatment for JVs lasting for 10 years or over. They are exempt from income tax for the first two profit-making years and obtain a 50% tax reduction for the three following profit-generating years. The first profit-making years are the fiscal years first following the carrying forward of losses of the previous years. These losses can be carried over for a maximum of five years. There is also a 10% withholding tax levied on expatriated dividends.

Profits reinvested in the same or another JV for five years can be granted a refund of up to 40% of the income taxes (excluding local taxes) paid on the reinvested amounts.

Fixed assets are depreciated following the straight-line method. Buildings can be depreciated at 5% a year; equipment at 10% per year. In addition to the income tax, a unified industrial and commercial tax is levied on domestic sales income of industrial products and on the value of payments for imported materials. Exemption of this latter tax can be obtained for imported equipment and materials used for construction purposes, or when purchased with funds from the JV's total investment or when imported for production designed to be exported.

Foreign employees are, depending on their resident status, subject to individual taxes on all or part of their incomes earned overseas and/or in China.

The Chinese tax system is generally characterized as flexible in its implementation. In addition to the general preferences accorded, the tax laws and regulations also provide for the JV to apply for reductions or exemptions of the local income taxes and the unified industrial and commercial taxes. Apart from illustrating the evolving taxation regime, the continuous issuance of new regulations and so-called "interim provisions" also clearly sow the seeds for some ambivalences and uncertainties. And, certain subjects such as, e.g. the tax treatment of reinvested royalties by the foreign partner are still not yet addressed by the Chinese tax laws.

In view of the above, it is advisable to obtain from all national and local tax authorities concerned as many guarantees and individual "tax rulings" as possibly warranted. Considering the Chinese propensity to attract foreign investments, good negotiators might expect to obtain some tax treatment individually tailored to the specific needs of their JV.

*Labor*

The employment, dismissal, work schedules, wage

bonuses and fines and labor protection are determined by a labor contract between the JV and the labor unions. Labor union representatives are entitled to attend the Board meetings when matters regarding the above are handled. The JV is required moreover to finance the local labor unions by allocating 2% of the total payroll to union funds.

Since labor quality, productivity and human resources are crucial to the local technology absorption and ultimately to the satisfactory running of the Chinese operations, foreign partners have to have a firm say in major labor issues. Foreign investors should, at the outset, identify the recruitment and selection criteria and set the training requirements of the local employees. In the same perspective, it is recommended to insert in the labor contracts provisions for a probationary period as well as a guaranteed right of the JV to dismiss workers for just cause. The implementation of this dismissal right should become easier now that China is gradually relaxing on the application of the "iron rice bowl" principle, which has traditionally symbolized a guaranteed protection against discharge.

Sino-foreign JVs will be expected to pay 120% to 150% of the standard salary of Chinese workers in similar state enterprises. In addition, they will have to finance the numerous labor and welfare subsidies, which can easily total 140% of the base salary.

China is still entangled in a controversy between the egalitarian concept of "equal pay for equal work" and the need to use wages and rewards as incentives to productivity. It nevertheless has recognized the practical necessity of the latter by enacting into a 1982 law the merit principle of rewarding work performance through greater remuneration.

NEGOTIATION POINTERS

Foreigners involved in a JV's negotiation process will eventually face a Chinese team of numerous shrewd negotiators.

Using the ideological umbrella and labyrinthian bureaucratic approval system for pushing their views across, the Chinese often appear to adopt hard-line positions. This perception may stem from their conditioning in a political environment not used to entice individual autonomy or dissenting opinions. In this environment, when faced with a particular request not always known to them, the Chinese will prefer to respond in the negative rather than to commit themselves. The appropriate reaction to this is tactfully to keep to one's points of view on crucial issues, without therefore indulging in unnecessary dogmatism.

The Chinese will expect their counterparts to take the lead role in developing creative solutions to break negotiation stalemates. Surprisingly, acceptable alternatives are often found in minor adaptations to proposed wording, which then becomes more responsive to particular local sensitivities. An awareness should, therefore, be developed regarding Chinese demands for the insertion of certain wording (such as: reference to Hong-Kong as "Chinese territory"... ) or for requests to delete certain common expressions (such as: civil commotions...) ordinarily appearing in western contracts.

Sensitivity to issues involving the Chinese sovereignty or political system should, however, not prevent nego-

tiators from defining their position in clear, unambiguous and tactful expressions. This is important, also, because the Chinese have lacked substantial international exposure for almost two decades prior to 1978. In this respect it is equally necessary to emphasize the need for a good translation. Considering that Chinese versions of foreign language documents will have equal legal status, a good high quality translation may save valuable time and energy along with the embarrassment of discrepancies in future interpretations.

Although the average negotiation times tend to shorten with the acquired experience, JV negotiations are likely to be long and protracted. Patience and allowance of sufficient reflection time will therefore become valuable virtues.

During the protracted negotiation process, the composition of the Chinese negotiating team will tend to change according to the topics discussed. A foreigner's negotiating team should, however, be kept as consistent and unchanged as possible. In doing so, teamwork and multifaceted approaches to the complexities of a JV cooperation are fostered.

Negotiators should also be prepared to expect regular last-minute observations and requests that, in some instances, could jeopardize the basics of the near-final understanding. One reason for this is that, although Chinese negotiators might indicate their agreement on a particular point, their many approval authorities who are not involved in the direct negotiations may not exactly share the same opinions. Another reason relates to the different approaches and multiple interpretations originating from the existing ambiguities found in the local laws and regulations.

### Bureaucratic Delays

To avoid bureaucratic delays and internal discussions between departments with overlapping jurisdictions, the Chinese JV partners should identify all the local authorities whose approval of the JV are necessary. It is also advisable to involve the appropriate authorities during the JV negotiations at an appropriate time. Because involvement of the Chinese authorities at too early a stage in the negotiations would cause more delay than progress in the approval process, these contacts should be informational, at least initially. Given the unclear lines of authority, it is also advised to assess the real influence of the key governmental departments concerned. In the same vein, it is necessary to ascertain the Chinese partner's potential in terms of his political influence, his leverage with local authorities, suppliers and trade unions and his authority to make certain claims.

It is also recommended to evaluate properly the potential partner and the JV's location in view of availability of trained personnel and adequate infrastructure and media means.

Considering the many still unknown factors of the Chinese market, there is a definite need to address in a detailed manner all the significant issues the JV may encounter. This presents a major role for the lawyer, whose responsibility is to combine creativity with pragmatism in developing *sui generis* solutions to given problems. To the extent the present Chinese system is still evolving, there are indeed plenty of opportunities for the legal advisor to design a specific (legal) answer to an occurring

issue.

This endeavor to cover important point of the prospective cooperation should not degenerate into a crystalball-gazing exercise, in which a paranoid attempt is made to address any conceivable contingency in such a fast-changing environment. Careful and detailed drafting of the many essentials of the JV cooperation associated with a nuts-and-bolts practical wisdom are, it is submitted, better suited to operating in the pendulating Chinese forum.

### Legislative Guidelines

The role of the steadily improving legislation should not be overestimated. At present, the Chinese laws merely reflect, in broad terms, certain general guidelines for investment in China. At this stage, their avowed purpose is not to provide an exhaustive set of strict rules. Between their theoretical interpretation and practical application still lies enough room for a flexible, realistic approach to doing business in China. A knowledge of the Chinese political realities, complemented by creative thinking and analytical skills and the all important non-nonsense pragmatic attitude should serve the foreign partner well during JV negotiations.

As in any successful cooperation, the close relations between JV partners will ultimately prevail over the contractual provisions. The extent to which the JV parties will be guided by common intentions rather than resorting to the contract terms will become an indicative measure of the JV's efficient running.

In general, JV investments in China appear to face one major obstacle shared by Chinese and foreign investors alike, i.e. the disappointment of overinflated and unrealized expectations. Foreign investors' interest in China is, too often, merely based on an almost irrational fixation with the potential market of one billion consumers. The foreign investor's prime goal of entering into a Sino-foreign JV lies then in the assumed expedient capture of such a huge domestic market.

This short-sighted approach offers the potential for conflicts with the avowed principal objective of the Chinese, i.e. to allow JVs to attract foreign technology and management techniques and to increase the country's export performance. On the one hand, the foreign investor's high-flying expectations of the Chinese market potential do not recognize the present basic weakness of the domestic buying power. On the other hand, the Chinese investors, eager to contribute to their country's economic performance, are often setting quick timetables for the JV's exports. These high projections of China's export development do not accord either with the prevailing shortage of internationally competitive domestic production nor with the need for international business to protect the profitability of their other overseas operations.

It is, therefore, appropriate during the negotiations to adopt a realistic approach to the anticipated investment benefits of China while having due consideration for the JV partners' respective convictions and objectives.

Doing business with and in China under the present circumstances requires a great deal of enthusiasm, imagination, personal involvement and, indeed, passion. As Hegel rightfully said, "Nothing great in this world was ever accomplished without passion."